

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

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In re:	§	
	§	Chapter 11
	§	
MLN US HOLDCO LLC, <i>et al.</i> , <sup>1</sup>	§	Case No. 25-90090 (CML)
	§	
Debtors.	§	(Joint Administration Requested)
	§	(Emergency Hearing Requested)

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**DEBTORS' EMERGENCY  
MOTION FOR ENTRY OF INTERIM  
AND FINAL ORDERS (I) AUTHORIZING  
THE DEBTORS TO (A) OBTAIN POSTPETITION  
FINANCING, (B) USE CASH COLLATERAL, AND (C) GRANT  
LIENS AND PROVIDE SUPERPRIORITY ADMINISTRATIVE  
EXPENSE CLAIMS, (II) GRANTING ADEQUATE PROTECTION TO  
PREPETITION SECURED PARTIES, (III) MODIFYING THE AUTOMATIC STAY,  
(IV) SCHEDULING A FINAL HEARING, AND (V) GRANTING RELATED RELIEF**

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**EMERGENCY RELIEF HAS BEEN REQUESTED. RELIEF IS REQUESTED NOT LATER THAN 11:00 A.M. (PREVAILING CENTRAL TIME) ON MARCH 11, 2025.**

**IF YOU OBJECT TO THE RELIEF REQUESTED OR YOU BELIEVE THAT EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU MUST APPEAR AT THE HEARING IF ONE IS SET, OR FILE A WRITTEN RESPONSE PRIOR TO THE DATE THAT RELIEF IS REQUESTED IN THE PRECEDING PARAGRAPH. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.**

**A HEARING WILL BE CONDUCTED ON THIS MATTER ON MARCH 11, 2025 AT 11:00 A.M. (PREVAILING CENTRAL TIME) IN COURTROOM 401, 4TH FLOOR, 515 RUSK STREET, HOUSTON, TEXAS 77002. PARTICIPATION AT THE HEARING WILL ONLY BE PERMITTED BY AN AUDIO AND VIDEO CONNECTION.**

**AUDIO COMMUNICATION WILL BE BY USE OF THE COURT'S DIAL-IN FACILITY. YOU MAY ACCESS THE FACILITY AT 832-917-1510. ONCE CONNECTED, YOU WILL BE ASKED TO ENTER THE CONFERENCE ROOM NUMBER. JUDGE LOPEZ'S CONFERENCE ROOM NUMBER IS 590153. VIDEO COMMUNICATION WILL BE BY USE OF THE GOTOMEETING PLATFORM. CONNECT VIA THE FREE GOTOMEETING APPLICATION OR CLICK THE LINK ON JUDGE LOPEZ'S HOME PAGE. THE MEETING CODE IS "JudgeLopez." CLICK THE SETTINGS ICON IN THE UPPER RIGHT CORNER AND ENTER YOUR NAME UNDER THE PERSONAL INFORMATION SETTING.**

**HEARING APPEARANCES MUST BE MADE ELECTRONICALLY IN ADVANCE OF BOTH ELECTRONIC HEARINGS. TO MAKE YOUR APPEARANCE, CLICK THE "ELECTRONIC APPEARANCE" LINK ON JUDGE LOPEZ'S HOME PAGE. SELECT THE CASE NAME, COMPLETE THE REQUIRED FIELDS AND CLICK "SUBMIT" TO COMPLETE YOUR APPEARANCE.**

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<sup>1</sup> A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://cases.stretto.com/Mitel>. The Debtors' service address for purposes of these chapter 11 cases is: 2160 W Broadway Road, Suite 103, Mesa, Arizona 85202.

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state as follows in support of this motion:

**Preliminary Statement**<sup>2</sup>

1. The Debtors commenced these chapter 11 cases with the support of the overwhelming majority of their prepetition capital structure in order to consummate a value-maximizing restructuring of the Debtors’ business. Specifically, pursuant to the *Restructuring Support Agreement*, dated March 9, 2025 (the “Restructuring Support Agreement”), the Consenting Stakeholders holding 100% of ABL Loan Claims, approximately 72.1% of the Priority Lien Claims, and approximately 81.1% of the Non-Priority Lien Term Loan Deficiency Claims, as well as the Consenting Sponsor holding over 99.0% of the common equity interests of the Debtors, have agreed to support the Plan. The debtor-in-possession financing facility and the consensual use of cash collateral in connection therewith contemplated by this motion is an integral part of the Debtors’ comprehensive prepackaged chapter 11 cases.

2. The Debtors are in urgent need of additional liquidity and absent the DIP Facility, the Debtors would not have the cash to continue operating their business and fund these cases and would be unable to effectuate a going-concern reorganization. Immediate and adequate financing is necessary to ensure that the Debtors have sufficient liquidity to pay their ordinary course operating expenses, finance these chapter 11 cases, and consummate the transactions contemplated by the Plan. The DIP Facility will provide the Debtors with ample liquidity to fund the Debtors’ business operations and administrative expenses during the chapter 11 cases. Moreover, access to the proposed DIP Facility will send a clear signal to the market that the Debtors’ operations will

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<sup>2</sup> Capitalized terms used but not defined in this section have the meanings ascribed to such terms elsewhere in this motion.

continue on a business-as-usual basis. Further, upon the occurrence of the Effective Date, the Debtors will effectuate a cashless payoff of the amounts outstanding under the DIP Facility. Except to the extent that a Holder of an Allowed DIP Claim and the Debtors (with the consent of the Required Consenting Senior Lenders) have agreed in writing to a less favorable treatment, in exchange for full and final satisfaction, settlement, release, and the discharge of each DIP Claim, each Holder of a DIP Claim shall receive, on the Effective Date: (a) on account of the portion of such Holder's Allowed DIP Claim that constitutes an Allowed DIP New Money Term Loan Claim, its Pro Rata share of the Tranche A-2 Term Loans (excluding the New Money Tranche A-2 Term Loans and any Incremental Tranche A-2 Term Loans) (the "DIP-to-Exit Roll"), and (b) on account of the portion of such Holder's Allowed DIP Claim that constitutes an Allowed DIP Roll-Up Term Loan Claim, its Pro Rata share of the DIP Equitization Shares (the "DIP Roll-Up Equitization"), which treatment all Holders of DIP Claims have consented to under the Plan pursuant to the terms set forth in the Restructuring Support Agreement and the applicable DIP Documents.

3. Approval of the DIP Facility and consensual use of cash collateral at the outset of these cases is a critical step in the Debtors' efforts to restructure their balance sheet in light of the liquidity concerns they have faced in recent years. As set forth in the First Day Declaration and as further discussed herein, the Debtors and their estates would suffer immediate and irreparable harm if the Debtors were denied the financing needed to sustain ongoing business operations. The Debtors believe that approval of the DIP Facility will enable the Debtors to effectuate a comprehensive going-concern reorganization and maximize value for the Debtors' estates and their stakeholders. As a result, the Debtors respectfully submit that entry into the DIP Facility is a sound exercise of the Debtors' business judgment and should be approved by the Court.

**Relief Requested**

4. The Debtors seek entry of an interim order (the “Interim Order”), substantially in the form attached hereto, and a final order (the “Final Order” and, together with the Interim Order, the “DIP Orders”)<sup>3</sup> granting the following relief:<sup>4</sup>

- ***DIP Facility:*** Authorizing the Debtors to obtain postpetition financing (the “DIP Financing”) pursuant to a \$131 million senior secured, debtor-in-possession term loan credit facility (the “DIP Facility”) as set forth in that certain *Debtor-in-Possession Term Loan Credit Agreement*, by and among the borrower thereto, the guarantors thereto, the lenders thereto (the “DIP Lenders”), and Acquiom Agency Services LLC and Seaport Loan Products LLC, as co-administrative agents (together, the “DIP Administrative Agent”), and Acquiom Agency Services LLC as the collateral agent (in such capacity, the “DIP Collateral Agent” and, collectively with the DIP Administrative Agent, the “DIP Agent”), substantially in the form attached as **Exhibit 1** to the Interim Order (the “DIP Credit Agreement”) and, together with the DIP Orders and the related security and ancillary documents, the “DIP Documents” and all obligations arising thereunder, the “DIP Obligations”), consisting of (i) new money term loans (the “New Money DIP Loans”) in the aggregate principal amount of \$69 million available upon entry of the Interim Order (inclusive of fees and premiums payable-in-kind) and (ii) the substitution and exchange of \$62 million of the Debtors’ prepetition principal obligations under the Priority Lien Credit Agreement (as defined below) for term loans under the DIP Credit Agreement (such loans, the “DIP Rolled-Up Loans”) and, together with the New Money DIP Loans, the “DIP Loans”), effective upon the entry of the Interim Order (but subject to the Challenge Period), with \$62 million of DIP Rolled-Up Loans deemed funded as of the Closing Date.
- ***Superpriority Claims and DIP Liens:*** Granting DIP Liens on the DIP Collateral (as defined below) to secure the DIP Obligations and to afford the DIP Obligations superpriority administrative status, subject to the terms set forth in the DIP Documents and the DIP Orders. The DIP Liens will be senior to all prepetition

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<sup>3</sup> The Debtors will file the form of Final Order prior to the Final Hearing.

<sup>4</sup> The summaries contained in this motion are qualified in their entirety by the provisions of the documents referenced. To the extent anything in this motion is inconsistent with such documents, the terms of the applicable documents shall control.

liens, subject to (x) the Carve-Out and the Canadian Priority Charges<sup>5</sup>, (y) solely on the Prepetition ABL Collateral, the Prepetition ABL Liens and the ABL Adequate Protection Liens (each as defined in the DIP Orders) and (z) such other liens as and solely to the extent set forth in the DIP Orders and subject further to the provisions therein and the other DIP Documents.

- **Cash Collateral:** Authorizing the Debtors to use Prepetition Collateral (as defined below), including Cash Collateral (as such term is defined in section 363(a) of the Bankruptcy Code) of the Prepetition Secured Parties (as defined below), subject to the terms set forth in the DIP Documents and the DIP Orders;
- **Adequate Protection:** Authorizing the Debtors to grant adequate protection to the Prepetition Secured Parties as set forth in the DIP Orders;
- **Automatic Stay:** Modifying the automatic stay under section 362 of the Bankruptcy Code (the “Automatic Stay”) to the extent necessary to implement and effectuate the terms and conditions of the DIP Orders; and
- **Final Hearing:** Scheduling a hearing (the “Final Hearing”) to consider final approval of this motion.

### **Jurisdiction and Venue**

5. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the Southern District of Texas, dated May 24, 2012 (the “Amended Standing Order”). This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined

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<sup>5</sup> As used in the Interim Order, “Canadian Priority Charges” shall mean, collectively, (i) the charge granted by the Ontario Superior Court of Justice (Commercial List) (the “CCAA Court”) in proceedings commenced by Mitel Networks Corporation (“MNC”) pursuant to Part IV of the Companies’ Creditors Arrangement Act (such proceedings, being the “CCAA Proceedings”) over MNC’s Collateral in Canada to secure payment of the professional fees and disbursements of the Debtors’ Canadian counsel, FTI Consulting Canada Inc., in its capacity as information officer in the CCAA Proceedings (the “Information Officer”) and counsel to the Information Officer (in a maximum amount not to exceed CDN \$500,000); and (ii) the charge granted by the CCAA Court on MNC’s Collateral in Canada (in a maximum amount not to exceed CDN \$3,800,000), securing an indemnity in favor of MNC’s directors and officers against any obligations or liabilities that they may incur as directors and officers of MNC on or after the commencement of the CCAA Proceedings.

that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

6. Venue of these chapter 11 cases and this motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

7. The bases for the relief requested herein are sections 105, 361, 362, 363, 364, 503, 506, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), Bankruptcy Rules 2002, 4001, 6003, 6004, and 9014, Rule 9013-1 of the Local Bankruptcy Rules for the Southern District of Texas (the “Local Rules”), and the Procedures for Complex Cases in the Southern District of Texas (the “Complex Case Procedures”).

### **Background**

8. On March 9 and March 10, 2025 (the “Petition Date”), the Debtors each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

9. The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no statutory committees have been appointed or designated.

10. The Debtors have filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b) substantially contemporaneously herewith.

11. A detailed description of the Debtors and their business, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Janine*

*Yetter in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed substantially contemporaneously herewith and incorporated herein by reference.<sup>6</sup>

12. In support of this motion, the Debtors rely on the (a) First Day Declaration and (b) *Declaration of Michael Schlappig in Support of Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors To (A) Obtain Postpetition Financing and (B) Use Cash Collateral, and (C) Grant Liens and Provide Superpriority Administrative Expense Claims, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* (the “Schlappig Declaration”), each filed contemporaneously herewith and incorporated herein by reference.

**Concise Statement and Summary**  
**Pursuant to Bankruptcy Rule 4001 and Local Rule 4001-2**

13. In accordance with Bankruptcy Rules 4001(b), 4001(c), 4001(d), and Local Rule 4001-2, the following is a concise statement and summary of the proposed material terms of the DIP Facility as provided in the DIP Documents and the DIP Orders:<sup>7</sup>

<b>Provision</b>	<b><u>Description</u></b>
<b>DIP Facility</b> Bankruptcy Rule 4001(c)(1)(B)) <i>Interim Order, Preamble</i>	A senior secured, superpriority and priming debtor-in-possession term loan credit facility, consisting of term loans in an aggregate principal amount of \$131 million, which consists of (i) new money term loans of \$69 million (inclusive of applicable fees and premiums payable-in-kind) available immediately upon entry of the Interim Order; and (ii) roll-up term loans of \$62 million which shall be effective upon entry of the Interim Order (subject to the Challenge Period), and which shall be deemed funded on the Closing Date.
<b>Borrower</b> Bankruptcy Rule 4001(c)(1)(B) <i>DIP Credit Agreement, Preamble</i>	MLN US HoldCo LLC

<sup>6</sup> Capitalized terms used but not defined in this motion have the meanings ascribed to them in the First Day Declaration, the Interim Order, the DIP Credit Agreement, or the *Joint Prepackaged Chapter 11 Plan of Reorganization of MLN US HoldCo LLC and Its Debtor Affiliates* (as may be amended, supplemented, or modified from time to time, the “Plan”) filed contemporaneously herewith, as applicable.

<sup>7</sup> This summary is intended only to assist the Court by reference to the DIP Credit Agreement and the DIP Orders, and is qualified in its entirety by the terms of the DIP Documents, each as may be modified by the DIP Orders.

<b>Provision</b>	<b><u>Description</u></b>
<i>Interim Order, Preamble</i>	
<b>DIP Agent</b> Bankruptcy Rule 4001(c)(1)(B) <i>DIP Credit Agreement, Preamble</i> <i>Interim Order, Preamble</i>	Acquiom Agency Services LLC (“ <u>Acquiom</u> ”) and Seaport Loan Products LLC (“ <u>Seaport</u> ”), as co-administrative agents (together, the “ <u>Administrative Agent</u> ”), and Acquiom as the collateral agent (in such capacity, the “ <u>Collateral Agent</u> ” and, together with the Administrative Agent, the “ <u>DIP Agent</u> ”)
<b>Guarantors</b> Bankruptcy Rule 4001(c)(1)(B) <i>DIP Credit Agreement, “Guarantors”; “Subsidiary Guarantor”</i> <i>Interim Order, Preamble</i>	All the Debtors in these chapter 11 cases party to the DIP Credit Agreement (other than MLN US HoldCo LLC) and certain non-Debtors party to the DIP Credit Agreement as “Guarantors”.
<b>DIP Lenders</b> Bankruptcy Rule 4001(c)(1)(B) <i>DIP Credit Agreement, “Lender”</i>	The lenders that are signatories to the DIP Credit Agreement from time to time. Each holder of Priority Lien Loans that executes a joinder to the Restructuring Support Agreement is eligible to subscribe to fund the New Money DIP Loans in an amount up to the pro rata share of Priority Lien Loans (as defined below) held by such Priority Lien Lender as of the March 9, 2025 Restructuring Support Agreement execution date.
<b>Term</b> Bankruptcy Rule 4001(b)(1)(B)(iii), 4001(c)(1)(B) <i>DIP Credit Agreement, “Maturity Date”</i>	The earliest to occur of (a) July 3, 2025; (b) the effective date of any Chapter 11 Plan for MLN US HoldCo LLC; (c) the consummation of a sale or other disposition of all or substantially all assets of the Debtors, taken as a whole, under section 363 of the Bankruptcy Code; and (d) the date of acceleration of the DIP Obligations or the termination of the DIP Facility in accordance with the terms of the DIP Credit Agreement.
<b>Fees, Premiums and Expenses</b> Bankruptcy Rule 4001(c)(1)(B) <i>DIP Credit Agreement, § 2.12</i>	The DIP Facility provides that the Borrower shall pay the following fees, premiums and expenses: <ul style="list-style-type: none"> <li>• Upfront Premium: 3.00% of the stated principal amount of the New Money DIP Loans in effect on the Closing Date, which shall be payable-in-kind.</li> <li>• Backstop Premium: each individual DIP Backstop Party will receive payment of a premium equal to 12.00% of the share of DIP New Money Term Loans backstopped by each such DIP Backstop Party, which shall be payable-in-kind.</li> <li>• The fees and expenses set forth in the fee letters described in section 2.12 of the DIP Credit Agreement, including the Agency Fee Letter (as defined therein).</li> </ul>
<b>Interest Rate</b> Bankruptcy Rule 4001(c)(1)(B) <i>DIP Credit Agreement, § 2.13</i>	At the Borrower’s election, either (a) SOFR <i>plus</i> 8.00% or (b) ABR <i>plus</i> 7.00%; in each case payable in cash.

Provision	<u>Description</u>
<p><b>DIP Liens</b>  <b>(Bankruptcy Rule 4001(c)(1)(B)(i))</b>  <i>Interim Order ¶ 8</i></p>	<p>The DIP Facility will be secured by senior liens on substantially all assets and property of the Debtors, whether now existing or hereafter acquired and wherever located (including, subject only to and effective upon entry of the Final Order, any Avoidance Proceeds) (the “<u>DIP Collateral</u>”), subject to (x) the Carve-Out and the Canadian Priority Charges, (y) solely on the Prepetition ABL Collateral, the Prepetition ABL Liens and the ABL Adequate Protection Liens and (z) such other liens as set forth in the Interim Order.</p>
<p><b>Modification of Non-Bankruptcy Law Relating to Perfection of Liens on Estate Property</b>  <b>(Bankruptcy Rule 4001(c)(1)(B)(vii))</b>  <i>Interim Order ¶ 8</i></p>	<p>The Interim Order contains customary provisions providing that entry of the Interim Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted therein, including the DIP Liens and the Adequate Protection Liens, without the necessity of any filings or recordings under non-bankruptcy law.</p>
<p><b>Superpriority Administrative Claims</b>  <b>(Bankruptcy Rule 4001(c)(1)(B)(i))</b>  <i>Interim Order ¶ 7</i></p>	<p>Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against the DIP Loan Parties on a joint and several basis (without the need to file any proof of claim) with priority over any and all claims against the DIP Loan Parties, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and any and all administrative expenses or other claims (including any claims against a Debtor held by a Debtor or a non-Debtor affiliate) arising under sections 105, 326, 327, 328, 330, 331, 364, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code.</p>
<p><b>Adequate Protection for Prepetition Secured Parties</b>  <b>(Bankruptcy Rule 4001(c)(1)(B)(ii), (b)(1)(B)(iv))</b>  <i>Interim Order ¶ 15</i></p>	<p>The adequate protection provided to the Prepetition Secured Parties shall be in accordance with the DIP Orders. As adequate protection, the Prepetition Secured Parties will receive a combination of:</p> <ul style="list-style-type: none"> <li>• payment of the reasonable and documented pre-petition and postpetition fees and expenses of the Prepetition Priority Lien Administrative Agent, the Ad Hoc Group and the Prepetition ABL Secured Parties;</li> <li>• superpriority administrative expense claims as provided by sections 503(b) and 507(b) of the Bankruptcy Code;</li> <li>• perfected security interests in and liens on the DIP Collateral to secure the Adequate Protection Claims;</li> <li>• payment of post-petition interest at the non-default contract rate applicable immediately prior to the Petition Date to the Prepetition ABL Administrative Agents, for themselves and for the benefit of the other Prepetition ABL Secured Parties, paid as and when due under the ABL Credit Documents; and</li> <li>• certain financial reporting, milestones, budget and financial covenants, maintenance of collateral and information rights.</li> </ul>
<p><b>Limitations on the DIP Lenders’ Obligations to Fund Activities of the Debtors</b></p>	<p>Notwithstanding any other provision of the Interim Order or any other order entered by the Court, no DIP Loans, DIP Collateral, Prepetition Collateral (including Cash Collateral) or any portion of the Carve-Out or the Canadian Priority Charges, may be used directly or indirectly, including without limitation through reimbursement of professional fees of any non-Debtor</p>

Provision	<u>Description</u>
<p><b>(Bankruptcy Rule 4001(c)(1)(B))</b> <i>Interim Order ¶ 22</i></p>	<p>party, in connection with (a) the investigation, threatened initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (i) against any of the DIP Secured Parties, or the Prepetition Secured Parties, or their respective predecessors-in-interest, agents, affiliates, Representatives, attorneys, or advisors, in each case in their respective capacities as such, or any action purporting to do the foregoing in respect of the DIP Obligations, DIP Liens, DIP Superpriority Claims, Prepetition Secured Debt, and/or the Adequate Protection Obligations and Adequate Protection Liens granted to the Prepetition Secured Parties, as applicable, or (ii) challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset with respect to the DIP Obligations, the Prepetition Secured Debt and/or the liens, claims, rights, or security interests securing or supporting the DIP Obligations granted under the Interim Order, the Final Order, the DIP Documents or the Prepetition Credit Documents in respect of the Prepetition Secured Debt, including, in the case of each (i) and (ii), without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550 or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise (provided that, notwithstanding anything to the contrary herein, the proceeds of the DIP Loans and/or DIP Collateral (including Cash Collateral) may be used by the Creditors' Committee to investigate but not to prosecute (A) the claims and liens of the Prepetition Secured Parties and (B) potential claims, counterclaims, causes of action or defenses against the Prepetition Secured Parties, up to an aggregate cap of no more than \$50,000, (b) attempts to prevent, hinder, or otherwise delay or interfere with the Prepetition Administrative Agents', the Prepetition Secured Parties', the DIP Agent's, or the DIP Secured Parties', as applicable, enforcement or realization on the Prepetition Secured Debt, Prepetition Collateral, DIP Obligations, DIP Collateral, and the liens, claims and rights granted to such parties under the Interim Order or Final Order, as applicable, each in accordance with the DIP Documents, the Prepetition Credit Documents and the Interim Order; (c) attempts to seek to modify any of the rights and remedies granted to the Prepetition Administrative Agents, the Prepetition Secured Parties, the DIP Agent, or the DIP Secured Parties under the Interim Order, the Prepetition Credit Documents or the DIP Documents, as applicable, other than in accordance with the Interim Order; (d) to apply to the Court for authority to approve superpriority claims or grant liens (other than the liens and claims granted hereunder or permitted pursuant to the DIP Documents) or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the DIP Liens, DIP Superpriority Claims, Adequate Protection Liens and Adequate Protection 507(b) Claims granted to the Prepetition Secured Parties; or (e) to pay or to seek to pay any amount on account of any claims arising prior to the Petition Date unless such payments are approved or authorized by the Court, agreed to in writing by the DIP Lenders, expressly permitted under the Interim Order or permitted under the DIP Documents (including the Approved Budget, subject to Permitted Variances), in each case unless all DIP Obligations, Prepetition Secured Debt, Adequate Protection Obligations, and claims granted to the DIP Agent, DIP Secured Parties, Prepetition Administrative Agents and Prepetition Secured Parties under the Interim Order, have been refinanced or paid in full in cash (including the cash collateralization of any letters of credit) or otherwise agreed to in writing by the DIP Secured Parties. For the avoidance of doubt, paragraph 22 of the Interim Order shall not limit the Debtors' right to use DIP</p>

Provision	<u>Description</u>
	Collateral to contest that an Event of Default has occurred hereunder pursuant to and consistent with paragraph 9 of the Interim Order.
<b>Events of Default</b> <b>(Bankruptcy Rule 4001(c)(1)(B))</b> <i>DIP Credit Agreement § 7.01</i>	Usual and customary events of defaults for facilities of this type and purpose, including, among others: <ul style="list-style-type: none"> <li>• Breach of the budget covenant,</li> <li>• failure to comply with milestones,</li> <li>• nonpayment of obligations,</li> <li>• covenant defaults,</li> <li>• breaches of representations and warranties, and</li> <li>• the occurrence of certain adverse actions or consequences in the chapter 11 cases.</li> </ul>
<b>Covenants</b> <b>(Bankruptcy Rule 4001(c)(1)(B))</b> <i>DIP Credit Agreement, Articles V and VI</i>	Affirmative Covenants: Usual and customary for financings of this type, including, without limitation, (a) reporting requirements, (b) delivery of certain compliance certificates, notices, reports and filings, (c) preservation of existence, (d) compliance with applicable laws, (e) payment of postpetition obligations, (f) maintenance of property and insurance, (g) keeping of books and records, (h) use of proceeds, (i) further assurances regarding collateral and guarantors, (j) compliance with milestones, (k) weekly conference calls, (l) use of proceeds and (m) delivery of the updated budgets and variance reporting.  Negative Covenants: Usual and customary for financings of this type, including, without limitation, restrictions on: (a) indebtedness, (b) liens, (c) investments, (d) disposition of assets, (e) restricted payments and payments in respect of other indebtedness, (f) transactions with affiliates and (g) any payments not in compliance with the Approved Budget (subject to permitted variances and exclusions).
<b>Reporting</b> <b>(Bankruptcy Rule 4001(c)(1)(B))</b> <i>DIP Credit Agreement § 5.04</i>	The DIP Facility requires compliance with certain periodic reporting covenants, including budget variance reports.
<b>Provisions Providing for the Reaffirmation of Prepetition Debt</b> <b>(Bankruptcy Rule 4001(c)(1)(B)(iii), (viii))</b> <i>Interim Order ¶¶ G, 21</i>	The Interim Order provides stipulations by the Debtor reaffirming the Prepetition Obligations and Prepetition Liens (each as defined below).  The Debtors' stipulations, admissions, agreements and releases contained in the Interim Order shall be binding upon the Debtors in all circumstances and for all purposes. The Debtors' stipulations, admissions, agreements and releases contained in the Interim Order shall be binding upon all other parties in interest, including, without limitation, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases and any other person or entity acting or seeking to act on behalf of the Debtors' estates including any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors, in all circumstances and for all purposes unless: (a) such committee or any other party in interest with requisite standing (subject in all respects to any agreement or applicable law that may limit or affect such entity's right or ability to do so) has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, inter alia, in this paragraph) by no later than (i) the earlier of three (3) business days prior to the commencement of the hearing to confirm a chapter 11 plan and

Provision	<u>Description</u>
	<p>(x) as to the Creditors' Committee only (if any), 60 calendar days after the appointment of the Creditors' Committee, (y) if the Chapter 11 Cases are converted to chapter 7 or a chapter 7 trustee or a chapter 11 trustee is appointed or elected prior to the end of the Challenge Period, then the Challenge Period for any such chapter 7 trustee or chapter 11 trustee shall be extended (solely as to such chapter 7 trustee and chapter 11 trustee) to the date that is the later of (1) 75 calendar days after entry of the Interim Order, or (2) the date that is 30 calendar days after its appointment, or (z) as for all other parties in interest, 75 calendar days after entry of the Interim Order, or (ii) any such later date as (y) has been agreed to by the Prepetition Priority Lien Administrative Agent with respect to the Prepetition Secured Debt or the Prepetition Liens or (z) has been ordered by the Court for cause upon a motion filed and served within any applicable period (the time period established by the foregoing clauses (i)-(ii), the "<u>Challenge Period</u>"), (A) objecting to or challenging the amount, validity, perfection, enforceability, priority or extent of the Prepetition Secured Debt or the Prepetition Liens, or (B) otherwise asserting or prosecuting any action for preferences, fraudulent transfers or conveyances, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "<u>Challenges</u>") against the Prepetition Secured Parties or their respective subsidiaries, affiliates, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof, in each case in their respective capacity as such (each, a "<u>Representative</u>" and, collectively, the "<u>Representatives</u>") in connection with matters related to the Prepetition Credit Documents, the Prepetition Secured Debt, the Prepetition Liens and the Prepetition Collateral; and (b) there is a final non-appealable order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding or contested matter; provided, however, that any pleadings filed in connection with any Challenge shall set forth with specificity the basis for such challenge or claim and any challenges or claims not so specified prior to the expiration of the Challenge Period shall be deemed forever, waived, released and barred. If no such Challenge is timely and properly filed during the Challenge Period or the Court does not rule in favor of the plaintiff in any such proceeding then: (1) the Debtors' stipulations, admissions, agreements and releases contained in the Interim Order shall be binding on all parties in interest; (2) the obligations of the DIP Loan Parties under the Prepetition Credit Documents, including the Prepetition Secured Debt, shall constitute allowed claims not subject to defense avoidance, reduction, setoff, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise), disallowance, impairment, claim, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity for all purposes in the Chapter 11 Cases, and any subsequent chapter 7 case(s); (3) the Prepetition Liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, security interests and liens, not subject to defense, avoidance, reduction, setoff, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise), disallowance, impairment, claim, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity, including any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases or any other party in interest acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or</p>

Provision	<u>Description</u>
	chapter 11 trustee or examiner appointed or elected for any of the Debtors) and any defense, avoidance, reduction, setoff, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise), disallowance, impairment, claim, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases or any other party acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors), whether arising under the Bankruptcy Code or otherwise, against any of the Prepetition Secured Parties and their Representatives arising out of or relating to any of the Prepetition Credit Documents, the Prepetition Secured Debt, the Prepetition Liens and the Prepetition Collateral shall be deemed forever waived, released and barred. If any such Challenge is timely filed during the Challenge Period, the stipulations, admissions, agreements and releases contained in the Interim Order shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on each other statutory or nonstatutory committee appointed or formed in the Chapter 11 Cases and on any other person or entity, except to the extent that such stipulations, admissions, agreements and releases were expressly and successfully challenged in such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction. Nothing in the Interim Order vests or confers on any Person (as defined in the Bankruptcy Code), including any statutory or non-statutory committees appointed or formed in these Chapter 11 Cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation, Challenges with respect to the Prepetition Credit Documents, the Prepetition Secured Debt or the Prepetition Liens, and any ruling on standing, if appealed, shall not stay or otherwise delay the Chapter 11 Cases or confirmation of any plan of reorganization.
<b>Use of Proceeds and Cash Collateral</b> <b>(Bankruptcy Rule 4001(c)(1)(B), (b)(1)(B)(ii))</b> <i>DIP Credit Agreement § 3.12</i>	Subject to any additional restrictions in the DIP Orders and the DIP Credit Agreement, the proceeds of (i) the New Money DIP Loans shall be used subject to and in accordance with the Approved Budget and (ii) the DIP Rolled Up Loans shall be used to refinance certain of the Priority Lien Obligations (as defined below) outstanding under the Priority Lien Credit Agreement.
<b>Entities with Interest in Cash Collateral</b> <b>(Bankruptcy Rule 4001(c)(1)(B), (b)(1)(B)(i))</b> <i>Interim Order ¶ I (ix)</i>	The Prepetition Secured Parties.
<b>Milestones</b> <b>(Bankruptcy Rule 4001(c)(1)(B)(vi))</b> <i>DIP Credit Agreement § 5.17</i>	The DIP Documents set forth the following Milestones: <ul style="list-style-type: none"> <li>• The Debtors shall launch solicitation of creditor acceptance of the Plan by no later than March 9, 2025;</li> <li>• The Petition Date shall take place on or before March 9, 2025;</li> <li>• On the Petition Date, the Company Parties shall file the Plan, Disclosure Statement, Scheduling Motion and the DIP Motion;</li> </ul>

Provision	<u>Description</u>
	<ul style="list-style-type: none"> <li>• As soon as practicable after the Petition Date, but in any event no later than one Business Day thereafter, the applicable Company Parties, the Consenting Sponsor, the Consenting Senior Lenders, and the Consenting Junior Lenders shall have jointly satisfied the commitments set forth in Section 5.07 of the Restructuring Support Agreement;</li> <li>• As soon as practicable after the Petition Date, but in any event no later than three days thereafter, the Bankruptcy Court shall enter the Scheduling Order and the Interim DIP Order;</li> <li>• As soon as practicable after the entry of the Interim DIP Order, but in any event no later than ten days thereafter, the CCAA Court shall enter the Initial Recognition Order, Supplemental Order, and Interim DIP Recognition Order;</li> <li>• No later than 30 days after the Petition Date, the Bankruptcy Court shall enter the Final DIP Order;</li> <li>• As soon as practicable after the entry of the Final DIP Order, but in any event no later than ten days thereafter, the CCAA Court shall enter the Final DIP Recognition Order;</li> <li>• No later than 45 days after the Petition Date, the Bankruptcy Court shall enter the Confirmation Order;</li> <li>• As soon as practicable after the entry of the Confirmation Order, but in any event no later than ten days thereafter, the CCAA Court shall enter the Confirmation Recognition Order; and</li> <li>• As soon as practicable after entry of the Confirmation Order, but in any event no later than 30 days after entry of the Confirmation Order, the Plan Effective Date shall occur; <i>provided</i> that this Milestone may be extended by the Debtors (with the consent of the Required Consenting Senior Lenders) up to 30 days if the purpose of such extension is solely to obtain regulatory approvals.</li> </ul>
<p><b>Indemnification</b>  <b>(Bankruptcy Rule 4001(c)(1)(B)(ix))</b>  <i>DIP Credit Agreement</i> §§ 8.07, 9.05  <i>Interim Order</i> ¶ 23</p>	<p>The debtors shall indemnify and hold harmless the Prepetition Secured Parties and the DIP Secured Parties in accordance with the DIP Documents and the DIP Orders, subject to customary exceptions.</p>
<p><b>Waiver/Modification of the Automatic Stay</b>  <b>(Bankruptcy Rule 4001(c)(1)(B)(iv))</b>  <i>Interim Order</i> ¶¶ 9(d), 9(e), 17(b), and 38</p>	<p>Pursuant to the DIP Orders, the automatic stay provisions of section 362 of the Bankruptcy Code are modified to the extent necessary to implement and effectuate the terms of the DIP Facility and the DIP Orders.</p>
<p><b>Section 506(c), 552(b) and Marshaling Waiver</b></p>	<p>The Debtors shall waive (a) the “equities of the case” exception under section 552(b) of the Bankruptcy Code and (b) section 506(c) of the Bankruptcy Code; <i>provided</i> that the foregoing waivers shall be without prejudice to any</p>

<b>Provision</b>	<b><u>Description</u></b>
<b>(Bankruptcy Rule 4001(c)(1)(B)(x))</b>  <i>Interim Order ¶¶ I (xii), 11, 12</i>	provisions of the Final Order with respect to costs or expenses incurred following the entry of such Final Order.  The Debtors shall waive the equitable doctrine of “marshaling” and other similar doctrines (a) with respect to the DIP Collateral for the benefit of any party other than the DIP Secured Parties and (b) with respect to any of the Prepetition Collateral (including the Cash Collateral) for the benefit of any party other than the Prepetition Secured Parties; <i>provided</i> that the foregoing waiver shall be without prejudice to any provisions of the Final Order.
<b>Liens on Avoidance Proceeds (Bankruptcy Rule 4001(c)(1)(B)(xi))</b>  <i>Interim Order ¶¶ 7, 8(a), and 15(b), (d), (f), (h), (j), and (l).</i>	Subject to the entry of the Final Order, the Avoidance Proceeds (but not the Avoidance Actions) shall be subject to liens securing the DIP Obligations and Adequate Protection 507(b) Claims; <i>provided</i> however, that, in the event of an enforcement of remedies in accordance with the DIP Documents and the Interim Order, the Prepetition Secured Parties and the DIP Secured Parties shall use commercially reasonable efforts to first satisfy the DIP Superpriority Claims or the Adequate Protection Claims, as applicable, from applicable Collateral other than Avoidance Proceeds before seeking to recover from Avoidance Proceeds.

### **Significant Provisions under the Complex Case Procedures**

14. The Interim Order and the Final Order, as applicable, contain certain of the provisions (the “Significant Provisions”) identified in paragraph 8 of the Complex Case Procedures as set forth below. In addition to the Debtors’ specific justifications for the Significant Provisions, provided in the table below, the Debtors believe that each Significant Provision is justifiable because the DIP Lenders would not have provided the DIP Facility to the Debtors without such provisions and the DIP Facility, taken as a whole, is fair and reasonable to the Debtors in the context of these chapter 11 cases and constitutes the best financing option available.

<b><u>Provision</u></b>	<b><u>Description</u></b>
<b>Cross-Collateralization.</b>	The Interim Order and Final Order do not contemplate cross-collateralization.
<b>Refinancing of Prepetition Obligations</b>	The DIP documents contain a roll-up provision, which provides that, immediately upon entry of the Interim Order but subject to the provisions and limitations contained in paragraph 21 of the Interim Order (including the Challenge Period), the Debtors shall be deemed automatically and without any further action, to substitute and exchange Priority Lien Loans of the DIP Lenders in an aggregate principal amount of \$62 million on a cashless basis for \$62 million of DIP Rolled-Up Loans, which shall be deemed funded on Closing Date.  <u>Justification</u>

<u>Provision</u>	<u>Description</u>
	The roll-up reflects the DIP Loan Parties' exercise of prudent business judgment consistent with their fiduciary duties. The Prepetition Secured Parties would not otherwise consent to the use of their Cash Collateral or the subordination of their liens to the DIP Liens, and the DIP Lenders would not be willing to provide the DIP Facility or extend credit to the DIP Loan Parties thereunder without the roll-up. The Debtors and the DIP Secured Parties engaged in arm's-length negotiations regarding the roll-up provision.
<b>Non-Consensual Priming Liens</b>	The Debtors are not seeking approval of any non-consensual priming liens.  All of the Prepetition Secured Parties have either consented to the DIP Facility or are deemed to have consented in accordance with the Omnibus Intercreditor Agreement.
<b>Provisions Limiting the Ability of Estate Fiduciaries to Fulfill Their Duties</b>	The Interim Order and Final Order do not include provisions limiting the abilities of estate fiduciaries to fulfill their duties, subject to compliance with the Approved Budget.
<b>Plan Milestones</b>	<u>Provision:</u>  The DIP Documents require the Debtors to comply with those certain milestones described in the table set forth in paragraph 13 herein, under "Milestones".  <u>Justification:</u>  The Debtors believe that these milestones are achievable and will allow them to complete a value-maximizing restructuring on a reasonable but fast-tracked timeline, and believe that the milestones balance the DIP Lenders' justifiable concerns about process costs with the time required for the Debtors to successfully complete their chapter 11 cases.
<b>Liens on Proceeds of Avoidance Actions</b>	<u>Provision:</u>  The DIP Collateral includes, upon entry of the Final Order, any proceeds or property recovered from all proceeds of claims and causes of action under sections 502(d), 544, 545, 547, 548 and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code (the " <u>Avoidance Actions</u> "). <i>Interim Order</i> ¶¶ 7 and 8(a).  <u>Justification:</u>  The Debtors believe that providing liens on proceeds of Avoidance Actions, but not the Avoidance Actions themselves, upon entry of the Final Order, is justifiable because (a) the Debtors' will retain control of the Avoidance Actions themselves, (b) the Debtors have minimal unencumbered property to provide as collateral for the DIP Facility and as adequate protection, (c) the liens on Avoidance Actions are subject to entry of the Final Order, allowing other parties in interest to object, and (d) the liens were required by the DIP Secured Parties as a condition to extending credit.
<b>Limitations on the Use of Cash Collateral</b>	<u>Provision</u>  Cash Collateral may not be used for certain enumerated purposes as set forth in the table set forth in paragraph 13 herein, under "Limitations on the DIP Lenders' Obligations to Fund Activities of the Debtors". <i>Interim Order</i> ¶ 22.

<u>Provision</u>	<u>Description</u>
	<p><u>Justification:</u></p> <p>In light of the Plan’s unimpairment of general unsecured creditors, the Debtors submit that the formation of an official committee of unsecured creditors in these chapter 11 cases is unwarranted. If an official committee of unsecured creditors is appointed, the Debtors will endeavor to engage with such official committee to address limitations on investigation costs to be set forth in the Final Order.</p>
<p><b>Default Provision Potentially Terminating the Automatic Stay Without Further Order</b></p>	<p><u>Provisions:</u></p> <p>Upon the occurrence and during the continuation of an Event of Default that has not been waived by the Required Lenders and following delivery of written notice (a “<u>Termination Notice</u>”) (including by e-mail) on not less than five (5) business days’ notice (such five (5) business day period, the “<u>DIP Agent Remedies Notice Period</u>”) to lead restructuring counsel to the Debtors, lead restructuring counsel to the Prepetition Priority Lien Administrative Agent, lead counsel to the Creditors’ Committee (if any), and the U.S. Trustee, (the “<u>Remedies Notice Parties</u>”), the DIP Agent may, (acting at the direction of Required Lenders) (and any automatic stay otherwise applicable to the DIP Secured Parties, whether arising under sections 105 or 362 of the Bankruptcy Code or otherwise, but subject to the terms of the Interim Order (including this paragraph) is hereby modified), without further notice to, hearing of, or order from this Court, to the extent necessary to permit the DIP Agent to, unless the Court orders otherwise (provided that during the DIP Agent Remedies Notice Period, the Debtors, the Creditors’ Committee (if appointed) and/or any party in interest shall be entitled to seek an emergency hearing (with the DIP Agent consenting to such emergency hearing) with the Court for the purpose of contesting whether, in fact, an Event of Default has occurred and is continuing or to obtain non-consensual use of Cash Collateral, and provided further that if a request for such hearing is made prior to the end of the DIP Agent Remedies Notice Period, then the DIP Agent Remedies Notice Period shall be continued until the Court hears and rules with respect thereto): (a) immediately terminate and/or revoke the Debtors’ right under the Interim Order and any other DIP Documents to use any Cash Collateral (subject to the Carve-Out and the Canadian Priority Charges), (b) terminate the DIP Facility and any DIP Document as to any future liability or obligation of the DIP Secured Parties but without affecting any of the DIP Obligations or the DIP Liens securing such DIP Obligations; (c) declare all DIP Obligations to be immediately due and payable; and (d) invoke the right to charge interest at the default rate under the DIP Documents. Upon delivery of such Termination Notice by the DIP Agent (acting at the direction of Required Lenders), without further notice or order of the Court, the DIP Secured Parties’ and the Prepetition Secured Parties’ consent to use Cash Collateral and the Debtors’ ability to incur additional DIP Obligations hereunder will, subject to the expiration of the DIP Agent Remedies Notice Period and unless the Court orders otherwise, automatically terminate and the DIP Secured Parties will have no obligation to provide any DIP Loans or other financial accommodations. As soon as reasonably practicable following delivery of a Termination Notice, the DIP Secured Parties shall file a copy of same on the docket. <i>Interim Order ¶ 9(d)</i></p> <p>Following an Event of Default and the delivery of the Termination Notice, but prior to exercising the remedies set forth in this sentence below or any other remedies (other than those set forth in paragraph 9(d) of the Interim Order,</p>

<u>Provision</u>	<u>Description</u>
	<p>the DIP Secured Parties shall be required to file a motion with the Court seeking emergency relief (the “<u>Stay Relief Motion</u>”) on not less than five (5) business days’ notice to the Remedies Notice Parties (which may run concurrently with the DIP Agent Remedies Notice Period) for a further order of the Court modifying the automatic stay in the Chapter 11 Cases to permit the DIP Secured Parties to, subject to the Carve-Out, the Canadian Priority Charges and related provisions: (a) freeze monies or balances in the Debtors’ accounts; (b) immediately set-off any and all amounts in accounts maintained by the Debtors with the DIP Agent or the DIP Secured Parties against the DIP Obligations (other than amounts that constitute Prepetition ABL Collateral unless the Prepetition ABL Secured Debt has been paid in full), (c) enforce any and all rights against the DIP Collateral (other than any Prepetition ABL Collateral unless the Prepetition ABL Secured Debt has been paid in full), including, without limitation, foreclosure on all or any portion of the DIP Collateral (other than any Prepetition ABL Collateral unless the Prepetition ABL Secured Debt has been paid in full), occupying the Debtors’ premises, and sale or disposition of the DIP Collateral (in each case, subject to paragraph 9(c) of the Interim Order); and (d) take any other actions or exercise any other rights or remedies permitted under the Interim Order, the DIP Documents or applicable law. If the DIP Secured Parties are permitted by the Court to take any enforcement action with respect to the DIP Collateral (other than any Prepetition ABL Collateral unless the Prepetition ABL Secured Debt has been paid in full) following the hearing on the Stay Relief Motion, the Debtors shall cooperate with the DIP Secured Parties in their efforts to enforce their security interest in the DIP Collateral, and shall not take or direct any entity to take any action designed or intended to hinder or restrict in any respect such DIP Secured Parties from enforcing their security interests in the DIP Collateral. Until such time that the Stay Relief Motion has been adjudicated by the Court, the Debtors may use the proceeds of the DIP Facility to the extent drawn prior to the occurrence of Event of Default or Cash Collateral to fund operations in accordance with the Approved Budget (subject to Permitted Variances) and the terms of the DIP Documents. The Debtors shall promptly cause a copy of any Stay Relief Motion to be served on any party that has filed a request for notices with this Court. <i>Interim Order ¶ 9(e)</i></p> <p><u>Justification:</u></p> <p>The Debtors believe that the provisions limiting the automatic stay in the Interim Order are justifiable because the DIP Lenders must seek relief from the Court before enforcement rights can be exercised.</p>
<p><b>Releases of Claims</b></p>	<p><u>Provisions</u></p> <p>Effective as of the date of entry of the Interim Order, each of the Debtors and (subject to the Challenge Period in paragraph 21 of the Interim Order) the Debtors’ estates, on its own behalf, on behalf of (to the greatest extent permitted by law) the Non-Debtor DIP Loan Parties, and on behalf of its and their respective past, present and future predecessors, successors, heirs, subsidiaries, and assigns, hereby absolutely, unconditionally and irrevocably releases and forever discharges and acquits the Prepetition Priority Lien Secured Parties, Prepetition Second Lien Secured Parties, Prepetition Third Lien Secured Parties, Prepetition ABL Secured Parties, the DIP Secured Parties, and each of their respective Representatives in such capacity (as defined in the Interim Order) (collectively, the “<u>Released Parties</u>”), from any and all obligations and liabilities to the Debtors (and their successors and</p>

<u>Provision</u>	<u>Description</u>
	<p>assigns) and from any and all claims, counterclaims, demands, defenses, offsets, debts, accounts, contracts, liabilities, actions and causes of action arising prior to the Petition Date of any kind, nature or description, whether matured or unmatured, known or unknown, asserted or unasserted, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, liquidated or unliquidated, pending or threatened, arising in law or equity, upon contract or tort or under any state or federal law or otherwise (collectively, the “<u>Released Claims</u>”), in each case arising out of or related to (as applicable) the Prepetition Credit Documents, the DIP Documents, the obligations owing and the financial obligations made thereunder, the negotiation thereof and of the transactions and agreements reflected thereby, and the obligations and financial obligations made thereunder, in each case that the Debtors at any time had, now have or may have, or that their predecessors, successors or assigns at any time had or hereafter can or may have against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of the Interim Order; provided that the releases set forth in this section shall not release any claims against a Released Party or liabilities that a court of competent jurisdiction determines results from the bad faith, fraud, gross negligence or willful misconduct of such Released Party. For the avoidance of doubt, nothing in this release shall relieve the DIP Secured Parties or the Debtors of their DIP Obligations under the DIP Documents. <i>Interim Order ¶ G(xvii)</i></p> <p><u>Justification:</u></p> <p>The Debtors believe that the releases of claims against the Prepetition Secured Parties in the Interim Order are appropriate, because (among other reasons) they are subject to the challenge provisions in compliance with the Complex Case Procedures. As to the DIP Secured Parties, such releases are not only customary, but the Debtors have been provided significant consideration in the form of the DIP Facility, such that the releases of claims are a fair exchange.</p>

15. Each of the DIP Facility and the consensual use of Cash Collateral, the terms of which were negotiated in good faith and at arm’s length, are critical to the Debtors’ continuing operations and essential to facilitating the restructuring transactions contemplated by the Restructuring Support Agreement. In light of the foregoing, the Significant Provisions are appropriate under the facts and circumstances of these chapter 11 cases and, therefore, the Significant Provisions in the DIP Orders should be approved.

**The Debtors' Prepetition Capital Structure**

**I. Funded Indebtedness**

16. As of the Petition Date, the Debtors have approximately \$1.31 billion in aggregate principal amount of funded debt obligations outstanding. The following table summarizes the Debtors' outstanding funded-debt obligations as of the Petition Date:<sup>8</sup>

<b><u>Description</u></b>	<b><u>Secured Funded Debt</u></b>	<b><u>Maturity</u></b>	<b><u>Principal Amount Outstanding (as of March 9, 2025)</u></b>
ABL Loans	Swiss ABL Loans	May 2027	\$3 million
	Non-Swiss ABL Loans	May 2027	\$14 million
Senior Loans	Priority Lien Term Loans	October 2027	\$156 million
	Incremental Revolving Loans	November 2025	\$65 million
	Second Lien Term Loans	October 2027	\$576 million
	Third Lien Term Loans	October 2027	\$125 million
	Third Lien Additional Facility	October 2027	\$32 million
Junior Loans	Legacy Senior Term Loans	November 2025	\$235 million
	Legacy Junior Term Loans	November 2026	\$108 million
		<b><u>Total Secured Funded Debt</u></b>	<b><u>\$1.31 billion</u></b>

<sup>8</sup> The following description of the Debtors' funded indebtedness is for informational purposes only and is qualified in its entirety by reference to the documents setting forth the specific terms of such obligations and their respective related agreements.

**A. ABL Loans**

17. On May 30, 2024, the Debtors and certain non-Debtor affiliates entered into two single-draw asset-based term loan lending facilities in an aggregate principal amount of \$17 million.

18. *Swiss ABL Loan Credit Agreement.* Non-Debtor Mitel Schweiz AG as borrower, Debtors MLN TopCo Ltd. (“TopCo”), Mitel Networks (International) Limited (“MNIL”), and MLN US TopCo Inc. (“U.S. Holdings”), U.S. PCI Services, LLC, as administrative and collateral agent (the “ABL Collateral Agent”), and certain guarantors and lenders (such lenders, the “Swiss ABL Lenders”) are parties to that certain *Term Loan Credit Agreement*, dated as of May 30, 2024 (as may be further amended, restated, supplemented, waived, or otherwise modified from time to time, the “Swiss ABL Loan Credit Agreement”). Pursuant to the Swiss ABL Loan Credit Agreement, lenders provided the Debtors and their non-Debtor affiliates (collectively, the “Company”) with asset-based term loans in an aggregate principal amount of \$2.75 million, (the “Swiss ABL Loans”).

19. As of the date hereof, approximately \$2.71 million in aggregate principal amount of Swiss ABL Loans remains outstanding, *plus* all accrued and unpaid interest, fees, costs, expenses, charges, indemnities, and all other unpaid obligations (collectively, the Swiss ABL Obligations”).

20. *Non-Swiss ABL Loan Credit Agreement.* MLN US HoldCo LLC, as Borrower (“Borrower”), TopCo, MNIL, U.S. Holdings, the ABL Collateral Agent, and certain guarantors and lenders (such lenders, the “Non-Swiss ABL Lenders” and together with the Swiss ABL Lenders and the ABL Collateral Agent, the “ABL Secured Parties”) are parties to that certain *Term Loan Credit Agreement*, dated as of May 30, 2024 (as may be further amended, restated, supplemented, waived, or otherwise modified from time to time, the “Non-Swiss ABL Loan Credit”).

Agreement” and together with the Swiss ABL Loan Credit Agreement and all ancillary documentation, the “ABL Credit Documents”). Pursuant to the Non-Swiss ABL Loan Credit Agreement, the lenders thereunder provided the Company with asset-based term loans in the aggregate principal amount of \$14.25 million (the “Non-Swiss ABL Loans” and, together with the Swiss ABL Loans, the “ABL Loans”). As of the date hereof, approximately \$14.04 million in aggregate principal amount of Non-Swiss ABL Loans remains outstanding, *plus* all accrued and unpaid interest, fees, costs, expenses, charges, indemnities, and all other unpaid obligations (collectively, the “Non-Swiss ABL Obligations”).

21. The ABL Loans are secured by a separate collateral package from the Senior Loans and Junior Loans (each as defined below). The obligations under the ABL Credit Documents are guaranteed by TopCo, MNIL, MNC, all United States subsidiaries (except Mitel Cloud Service of Virginia, Inc.), all German subsidiaries, all United Kingdom subsidiaries (except Inter-Tel Europe Limited and Mitel Networks Pension Trustee Company Limited) (such subsidiaries, the “UK ABL Guarantors”), and, solely in the case of the Non-Swiss ABL Loans, Mitel Schweiz AG (collectively, the “Guarantors”). The Swiss ABL Obligations are secured by liens on, and security interests in, certain assets of Mitel Schweiz AG (such assets, the “Swiss ABL Collateral” and such liens and security interests, the “Swiss ABL Liens”). The Non-Swiss ABL Obligations are secured by liens on, and security interests in, certain assets of Debtors Unify Inc., Mitel Networks, Inc., and Mitel Technologies, Inc., and non-Debtors Mitel Networks Holdings Limited and Mitel Networks Limited (such assets, the “Non-Swiss ABL Collateral” such liens and security interests, the “Non-Swiss ABL Liens”).

#### **B. Senior Loan Obligations**

22. The “Senior Loan Facilities” are comprised of credit facilities in the following order of priority: (a) the Priority Lien Term Loans and the Incremental Revolving Loans; (b) the Second

Lien Term Loans; and (c) the Third Lien Term Loans and the Third Lien Additional Facility (each as defined herein).

23. *Priority Lien Credit Agreement.* Borrower, TopCo, MNIL, U.S. Holdings, Wilmington Savings Fund Society, FSB, as successor collateral and administrative agent (the “Senior Collateral Agent”), and certain guarantors and lenders are parties to that certain *Priority Lien Credit Agreement*, dated as of October 18, 2022 (as amended pursuant to that certain *Amendment No. 1* dated as of November 18, 2022, that certain *Incremental Assumption Agreement* (as may be further amended, restated, supplemented, waived, or otherwise modified from time to time, the “Priority Incremental Assumption Agreement”), and as may be further amended, restated, supplemented, waived, or otherwise modified from time to time, the “Priority Lien Credit Agreement”). Pursuant to the Priority Lien Credit Agreement, lenders provided the Company with term loans in the aggregate principal amount of \$156 million (the “Priority Lien Term Loans”). As of the date hereof, approximately \$156 million in aggregate principal amount of Priority Lien Term Loans remains outstanding, *plus* all accrued and unpaid interest, fees, costs, expenses, charges, indemnities, and all other unpaid obligations (collectively, the Priority Lien Term Loan Obligations”).

24. *Incremental Revolving Loans.* The Priority Lien Credit Agreement provides that the Borrower may request that the lender parties thereto provide additional incremental term loan or revolving commitments. On November 18, 2022, Borrower, TopCo, MNIL, U.S. Holdings, the Senior Collateral Agent, and certain lenders executed the Priority Incremental Assumption Agreement, pursuant to which the commitments of the pre-existing revolving credit facility were reduced from \$90 million to \$65 million (the “Incremental Revolving Loans” and, together with the Priority Lien Term Loans, the “Priority Lien Loans”). As of the date hereof, approximately

\$65 million in aggregate principal amount of the Incremental Revolving Loans (including letters of credit issued thereunder) remains outstanding, *plus* all accrued and unpaid interest, fees, costs, expenses, charges, indemnities, and all other unpaid obligations (collectively, the Incremental Revolving Loan Obligations)” and, together with the Priority Lien Term Loan Obligations, the “Priority Lien Obligations”).

25. *Second Lien Term Loans.* Borrower, TopCo, MNIL, U.S. Holdings, the Senior Collateral Agent, and certain guarantors and lenders are parties to that certain *Second Lien Credit Agreement*, dated as of October 18, 2022 (as amended pursuant to that certain *Amendment No. 1* dated as of November 18, 2022, and as may be further amended, restated, supplemented, waived, or otherwise modified from time to time, the “Second Lien Credit Agreement”). Pursuant to the Second Lien Credit Agreement, lenders provided the Company with term loans in the aggregate principal amount of \$576 million (the “Second Lien Term Loans”). As of the date hereof, approximately \$576 million in aggregate principal amount of Second Lien Term Loans remains outstanding, *plus* all accrued and unpaid interest, fees, costs, expenses, charges, indemnities, and all other unpaid obligations (collectively, the Second Lien Obligations”).

26. *Third Lien Term Loans.* Borrower, TopCo, MNIL, U.S. Holdings, the Senior Collateral Agent, and certain guarantors and lenders are parties to that certain *Third Lien Credit Agreement*, dated as of October 18, 2022 (as amended pursuant to that certain *Amendment No. 1* dated as of November 18, 2022, that certain *Incremental Assumption Agreement* (as may be further amended, restated, supplemented, waived, or otherwise modified from time to time, the “Third Lien Incremental Assumption Agreement”) and as may be further amended, restated, supplemented, waived, or otherwise modified from time to time, the “Third Lien Credit Agreement” and together with the Priority Lien Credit Agreement, the Priority Incremental

Assumption Agreement, the Second Lien Credit Agreement, the Third Lien Incremental Assumption Agreement, and all ancillary documentation, the “Senior Credit Agreements”). Pursuant to the Third Lien Credit Agreement, lenders provided the Company with term loans in the aggregate principal amount of \$125 million (the “Third Lien Term Loans”).

27. *Third Lien Additional Facility.* In addition, under the Third Lien Credit Agreement, the Borrower may by written notice to the Senior Collateral Agent request additional incremental loans up to \$80 million. On March 9, 2023, Borrower, TopCo, MNIL, U.S. Holdings, the Senior Collateral Agent, and certain lenders executed the Third Lien Incremental Assumption Agreement, pursuant to which lenders provided the Company with term loans in the aggregate principal amount of \$32 million (the “Third Lien Additional Facility” and together with the Priority Lien Term Loans, the Incremental Revolving Loans, the Second Lien Term Loans, and the Third Lien Term Loans, the “Senior Loans”).

28. As of the date hereof, approximately \$125 million in aggregate principal amount of Third Lien Term Loans and \$32 million in aggregate principal amount under the Third Lien Additional Facility remain outstanding, *plus* all accrued and unpaid interest, fees, costs, expenses, charges, indemnities, and all other unpaid obligations (collectively, the “Third Lien Obligations” and together with the Priority Lien Obligations and the Second Lien Obligations, the “Senior Loan Obligations”).

29. The Senior Loan Facilities are guaranteed by the Guarantors, except for Mitel Schweiz AG (collectively, the “Superpriority Guarantors”), and secured by liens on, and security interests in, substantially all assets of the Superpriority Guarantors (the “Superpriority Collateral”), subject to certain exceptions set forth in the Senior Credit Agreements (such liens and security interests, the “Superpriority Liens”).

**C. Junior Loan Obligations**

30. The “Junior Loan Facilities” are comprised of credit facilities in the following order of priority: (a) the Legacy Senior Term Loans and (b) the Legacy Junior Term Loans (each as defined herein).

31. *Legacy Senior Credit Agreement.* Borrower, TopCo, MNIL, U.S. Holdings, Ankura Trust Company, LLC as successor collateral and administrative agent (the “Junior Collateral Agent” and together with the Senior Collateral Agent, the “Term Loan Collateral Agents” and together with the ABL Collateral Agent, the “Prepetition Agents”) and certain guarantors and lenders are parties to that certain *First Lien Credit Agreement*, dated as of November 30, 2018 (as amended pursuant to that certain *Amendment No. 1* dated as of October 22, 2020, *Amendment No. 2* dated as of October 18, 2022, and *Amendment No. 3* dated as of October 18, 2022, and as may be further amended, restated, supplemented, waived, or otherwise modified from time to time, the “Legacy Senior Credit Agreement”). Pursuant to the Legacy Senior Credit Agreement, lenders provided the Company with term loans in the aggregate principal amount of \$235 million (the “Legacy Senior Term Loans”). As of the date hereof, approximately \$235 million in aggregate principal amount of Legacy Senior Term Loans remains outstanding, *plus* all accrued and unpaid interest, fees, costs, expenses, charges, indemnities, and all other unpaid obligations (collectively, the “Legacy Senior Obligations”).

32. *Legacy Junior Credit Agreement.* Borrower, TopCo, MNIL, U.S. Holdings, the Junior Collateral Agent, and certain guarantors and lenders are parties to that certain *Second Lien Credit Agreement*, dated as of November 30, 2018 (as amended pursuant to that certain *Amendment No. 1* dated as of October 18, 2022 and *Amendment No. 2* dated as of October 18, 2022, and as may be further amended, restated, supplemented, waived, or otherwise modified from time to time, the “Legacy Junior Credit Agreement” and together with the Legacy Senior Credit

Agreement and all ancillary documentation, the “Junior Credit Agreements” and collectively with the ABL Credit Documents and the Senior Credit Agreements, the “Prepetition Credit Documents” and the lenders and collateral and administrative agents thereunder, the “Prepetition Secured Parties”). Pursuant to the Legacy Junior Credit Agreement, lenders provided the Company with term loans in the aggregate principal amount of \$108 million (the “Legacy Junior Term Loans” and together with the Legacy Senior Term Loans, the “Junior Loans” and together with the Senior Loans and the ABL Loans, the “Prepetition Term Loans”). As of the date hereof, approximately \$108 million in aggregate principal amount of Legacy Junior Term Loans remains outstanding, *plus* all accrued and unpaid interest, fees, costs, expenses, charges, indemnities, and all other unpaid obligations (collectively, the “Legacy Junior Obligations” and together with the Legacy Senior Obligations, the “Junior Loan Obligations” and together with the Senior Loan Obligations, the Swiss ABL Obligations, and the Non-Swiss ABL Obligations, the “Prepetition Obligations”).

33. The Junior Loan Facilities are guaranteed by the Guarantors, except for Unify Inc., Mitel Schweiz AG, the UK ABL Guarantors and the subsidiaries of the Company in Germany (collectively, the “Legacy Guarantors”), and secured by liens on, and security interests in, substantially all assets of the Legacy Guarantors (the “Legacy Collateral” and together with the Superpriority Collateral, the Swiss ABL Collateral and the Non-Swiss ABL Collateral, the “Prepetition Collateral”), subject to certain exceptions set forth in the Junior Credit Agreements (such liens and security interests, the “Legacy Liens” and together with the Superpriority Liens, the Swiss ABL Liens and the Non-Swiss ABL Liens, the “Prepetition Liens”).

## **II. Intercreditor Agreement**

34. The Senior Collateral Agent, the Junior Collateral Agent, TopCo, MNIL, U.S. Holdings, Borrower, and certain Debtor and non-Debtor entities party thereto, entered into that certain *Omnibus Intercreditor Agreement*, dated as of October 18, 2022 (as may be further

amended, restated, supplemented, waived, or otherwise modified from time to time, the “Omnibus Intercreditor Agreement”). The Omnibus Intercreditor Agreement governs, among other things, the rights, interests, obligations, priority, and positions of the liens and claims to the “Common Collateral” (as defined in the Omnibus Intercreditor Agreement) under the Senior Loans and the Junior Loans.<sup>9</sup>

35. The Omnibus Intercreditor Agreement provides that (a) any lien on the Common Collateral securing obligations under the Priority Lien Credit Agreement and Priority Incremental Assumption Agreement is senior to the liens securing the Second Lien Credit Agreement, Third Lien Credit Agreement, Third Lien Incremental Assumption Agreement, Legacy Senior Credit Agreement, and Legacy Junior Credit Agreement (in such order); (b) any lien on the Common Collateral securing the Second Lien Credit Agreement is subordinate to the liens securing the Priority Lien Credit Agreement and Priority Incremental Assumption Agreement and senior to the liens securing the Third Lien Credit Agreement, Third Lien Incremental Assumption Agreement, Legacy Senior Credit Agreement and Legacy Junior Credit Agreement (in such order); (c) any lien on the Common Collateral securing the obligations under the Third Lien Credit Agreement and Third Lien Incremental Assumption Agreement is subordinate to the liens securing the Priority Lien Credit Agreement, Priority Incremental Assumption Agreement, and Second Lien Credit Agreement and senior to the liens securing the Legacy Senior Credit Agreement and Legacy Junior Credit Agreement (in such order); (d) any lien on the Common Collateral securing the obligations under the Legacy Senior Credit Agreement is subordinate to the liens securing the Priority Lien Credit Agreement, Priority Incremental Assumption Agreement, Second Lien Credit Agreement, Third Lien Credit Agreement and Third Lien Incremental Assumption Agreement; and (e) any lien

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<sup>9</sup> For the avoidance of doubt, the ABL Loans are not subject to the Omnibus Intercreditor Agreement.

on the Common Collateral securing the obligations under the Legacy Junior Credit Agreement is subordinate to the liens securing the Priority Lien Credit Agreement, Priority Incremental Assumption Agreement, Second Lien Credit Agreement, Third Lien Credit Agreement, Third Lien Incremental Assumption Agreement and Legacy Senior Credit Agreement.

36. Further, the Omnibus Intercreditor Agreement provides that each of the parties thereto (including the Senior Collateral Agent and the Junior Collateral Agent) shall, subject to certain conditions, raise no objection to, and be deemed to have consented to, any relief provided for in an insolvency proceeding with respect to, among other things, the use of cash collateral, DIP financing, adequate protection, and the incursion of administrative priority expenses and priming DIP liens, so long as the Senior Collateral Agent, acting with the requisite majority consent of holders of the Priority Lien Loans, has consented to such relief. Pursuant to the Restructuring Support Agreement, the requisite majority of holders of Priority Lien Loans have consented to the relief requested in this Motion. Thus, while the overwhelming majority of holders of each other tranche of Senior Loans and Junior Loans are parties to the Restructuring Support Agreement and, therefore, have affirmatively consented to the relief requested in this Motion, any holder of Senior Loans and Junior Loans that is not party to the Restructuring Support Agreement is deemed to have consented to such relief in accordance with the Omnibus Intercreditor Agreement.

**The Debtors' Need for Use of Cash Collateral  
and the DIP Facility, and Development of the Approved Budget**

37. To continue operating in the ordinary course and to effectuate an efficient and expeditious prepackaged restructuring, the Debtors need immediate access to liquidity. *See* First Day Decl. ¶¶ 81-86. As described in greater detail in the First Day Declaration, the Debtors, with the assistance of their advisors, analyzed their cash needs in order to determine the liquidity levels necessary to stabilize the Debtors' operations and fund the administration of these chapter 11

cases. In undertaking this analysis, the Debtors, with the assistance of their advisors, considered the Debtors' near-term projected financial performance, including the Debtors' capital structure, potential sources of liquidity, and available financial runway. *Id* at ¶ 64.

38. As part of the Debtors' financial review and analysis, the Debtors, with the assistance of their proposed financial advisor, FTI Consulting, Inc., developed an initial 13-week budget, a copy of which is attached to this motion as **Exhibit A** (the "Initial Budget"). The Initial Budget incorporates a number of factors and reasonable assumptions, including the Debtors' substantial working capital requirements, the effect of filing for chapter 11 on the Debtors' operations, material cash disbursements, including professional fees, vendor relationships and required payments, cash flows from the Debtors' ongoing operations, and the cost of necessary goods and services.

39. With the consent of the Prepetition Secured Parties, the Debtors will use Cash Collateral and the proceeds of the DIP Facility to fund working capital, for case administration expenses, and for other general corporate purposes. As Cash Collateral alone would be insufficient to fund the costs associated with the Debtors' operations and these prepackaged chapter 11 cases, the Debtors, with the assistance of their advisors, determined that the additional postpetition financing provided by the DIP Facility would be necessary to allow the Debtors to pay for costs of these chapter 11 cases, fund adequate protection payments, fund working capital requirements, and demonstrate to their stakeholders that they are well capitalized and have sufficient funding to effectuate the going-concern reorganization contemplated by the Plan without disruption. Accordingly, the Debtors believe that the DIP Facility and use of Cash Collateral as contemplated herein are fundamental to the preservation and maintenance of the Debtors' going-concern value

during these chapter 11 cases and critical for the Debtors' successful reorganization. *Id* at ¶¶ 83-84.

40. Absent access to Cash Collateral and the DIP Facility, the Debtors will promptly lack sufficient liquidity to continue their operations in the ordinary course to the material detriment of the Debtors' estates, customers, creditors, employees, suppliers, and other parties in interest. *Id* at 84. Moreover, access to Cash Collateral and the DIP Facility are necessary to fund these chapter 11 cases and enable the Debtors to confirm their prepackaged Plan for the benefit of their stakeholders. Therefore, the Debtors have an immediate and critical need to access the DIP Facility and Cash Collateral on an interim basis and throughout the pendency of these chapter 11 cases.

**Alternative Sources of Financing Are Not Available on Better Terms**

41. As explained in the Schlappig Declaration, notwithstanding the efforts by the Debtors, with the assistance of their proposed investment banker, PJT Partners LP (“PJT”), to reach out to other potential financing sources, the Debtors did not receive any actionable financing proposals that would adequately fund a chapter 11 process on terms that were superior to the proposal provided by the DIP Lenders.

42. The Debtors, with the assistance of PJT, contacted five third-party, sophisticated financial institutions about postpetition financing alternatives. Schlappig Decl. ¶. 13. However, notwithstanding these outreach efforts, none of these parties expressed any willingness to lend on an unsecured or junior basis and/or engage in a “priming fight” with the Debtors' prepetition secured lenders. *Id*. Additionally, the Debtors do not have any meaningful unencumbered assets that would support a new secured post-petition facility on a previously unencumbered collateral package. *Id*. at ¶ 12. The Ad Hoc Group, which collectively holds a substantial majority of the Debtors' prepetition funded debt claims, including a majority of both outstanding Priority Lien

Obligations and all Senior Loan Obligations, made clear that they would not consent to the Debtors' incurrence of financing by any other party having priming or *pari passu* liens on the Superpriority Collateral securing the Senior Loan Obligations. *Id.*

43. The Debtors received a proposal from the Ad Hoc Group to provide a debtor-in-possession financing facility that would, among other things, permit the Debtors to (a) fund these chapter 11 cases and address their go-forward operations through a new money investment in the amount of \$60 million (plus applicable fees and premiums, payable-in-kind), which will be converted into a portion of the Tranche A-2 Term Loan Facility through the DIP-to-Exit Roll, (b) substantially reduce their prepetition funded indebtedness and debt servicing obligations through the DIP Roll-Up Equitization, (c) avoid interruption to ordinary course operations, and (d) implement a comprehensive going-concern reorganization of the Debtors' business in a timely and efficient manner. *Id.* at ¶ 16. Ultimately, these outreach efforts and subsequent negotiations with the Ad Hoc Group culminated in the DIP Facility and the Restructuring Support Agreement.

44. Thus, the Debtors believe that the DIP Facility provided by the Ad Hoc Group is the only and best option available to address the Debtors' liquidity needs and implement a value-maximizing restructuring.

#### **Use of Cash Collateral**

45. The DIP Facility contemplates that the Debtors will have immediate access to Cash Collateral on a consensual basis, subject to the terms and conditions of the DIP Documents, the DIP Orders, and the Approved Budget. In advance of the Petition Date, the Debtors undertook an analysis of how much postpetition financing and liquidity would be required to operate the Debtors' business and pay administrative costs during these chapter 11 cases. *See First Day Decl.* ¶ 83. Coupled with the liquidity provided under the DIP Facility, immediate access to the Cash Collateral will (a) ensure that the Debtors have sufficient working capital to, among other things,

continue their business operations in the ordinary course by paying their employees, vendors, landlords, suppliers, and other key postpetition creditors essential to the operation of the Debtors' business, (b) enable the Debtors to honor their prepetition and postpetition obligations under and in accordance with the proposed "first-day" relief if approved by the Court, and (c) satisfy administrative expenses of these chapter 11 cases. Providing the Debtors with immediate access to Cash Collateral, together with the DIP Facility, ensures that the Debtors avoid unnecessary business disruptions that would otherwise be costly and potentially damaging to their business.

### **Forms of Adequate Protection**

46. The Prepetition Secured Parties' consent to the use of the Prepetition Collateral (including Cash Collateral) and the Debtors' granting of DIP Liens, each on the terms set forth in the Interim Order, are subject to the provision by the Debtors of adequate protection. Among other things, the adequate protection contemplated by the DIP Orders is designed to protect the Prepetition Secured Parties' interests in the Debtors' property from any diminution in value ("Diminution in Value") caused by, among other reasons, the imposition of the automatic stay, the Debtors' use of Prepetition Collateral, including Cash Collateral, and the Debtors' granting of DIP Liens, the Carve-Out and the Canadian Priority Charges.

47. As set forth in the DIP Orders, the adequate protection provided to the Prepetition Secured Parties shall consist of a combination of: (i) payment of the reasonable and documented pre-petition and postpetition fees and expenses of the Prepetition Priority Lien Administrative Agent, the Ad Hoc Group and the Prepetition ABL Secured Parties; (ii) superpriority administrative expense claims as provided by sections 503(b) and 507(b) of the Bankruptcy Code; (iii) perfected security interests in and liens on the DIP Collateral to secure the Adequate Protection Claims; (iv) payment of post-petition interest at the non-default contract rate applicable immediately prior to the Petition Date to the Prepetition ABL Administrative Agents, for

themselves and for the benefit of the other Prepetition ABL Secured Parties, paid as and when due under the ABL Credit Documents; and (v) certain financial reporting, milestones, budget and financial covenants, maintenance of collateral and information rights.

**The DIP Facility and Use of Cash Collateral  
Are Necessary to Preserve the Debtors' Estates**

48. Given the Debtors' current projections and the absence of sufficient unencumbered assets, immediate access to the DIP Facility and use of Cash Collateral is necessary for the Debtors to continue operations, including to fund employee-related costs, procure necessary goods and services, maintain trade terms with the Debtors' vendors, pay the Debtors' landlords, finance the costs of these chapter 11 cases, and meet other working capital needs of the Debtors. First Day Decl. ¶ 84. Without immediate access to the DIP Facility and use of Cash Collateral on the terms requested here, the Debtors will suffer immediate and irreparable harm. *Id.* Consequently, approval of the DIP Facility and use of Cash Collateral is necessary to preserve the value of the Debtors' estates.

**Basis for Relief**

**I. The Debtors Should Be Authorized to Obtain Postpetition Financing on a Senior Secured and Superpriority Basis**

49. The Debtors have met the requirements for relief under section 364 of the Bankruptcy Code, which permits a debtor to obtain postpetition financing and, in return, to grant superpriority administrative status and liens on its property. Specifically, section 364(c) of the Bankruptcy Code provides that the court may approve financing "with priority over any or all administrative expenses..." 11 U.S.C. § 364(c). Further, section 364(d) of the Bankruptcy Code provides that priming liens may be granted to support postpetition financing if the debtor is "unable to obtain such credit otherwise" and the primed lienholders either consent or are otherwise adequately protected. 11 U.S.C. § 364(d).

50. Provided that an agreement to obtain secured credit is consistent with the provisions of, and policies underlying, the Bankruptcy Code, courts grant considerable deference to a debtor's exercise of its business judgment when evaluating its requests to incur postpetition credit. *See, e.g., In re N. Bay Gen. Hosp., Inc.*, No. 08-20368 (Bankr. S.D. Tex. July 11, 2008) (order approving postpetition financing on an interim basis as exercise of debtors' business judgment); *see In re Estrada*, No. 16-80003, 2016 WL 745536, at \*3 (S.D. Tex. Feb. 24, 2016) ("In determining whether to approve a motion to obtain credit, courts generally permit debtors in possession to exercise their basic business judgment consistent with their fiduciary duties."); *In re Latam Airlines Grp. S.A.*, 2020 WL 5506407 at \*27 (Bankr. S.D.N.Y. Sept. 10, 2020) ("Generally, in evaluating the merits of proposed postpetition financing, courts will defer to a debtor's business judgment provided that the financing does not unduly benefit a party in interest at the expense of the estate."); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (deferring to a debtor's "reasonable business judgment. . . so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in interest").

51. In determining whether the Debtors have exercised sound business judgment in deciding to enter into the DIP Facility, this Court may take into consideration non-economic benefits to the Debtors offered by a proposed postpetition facility. For example, in *In re ION Media Networks, Inc.*, 2009 WL 2902568, at \*4 (Bankr. S.D.N.Y. July 6, 2009), the Bankruptcy Court for the Southern District of New York explained that "noneconomic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization" may be properly considered by debtors when selecting postpetition

financing, because the “business decision to obtain credit from a particular lender is almost never based purely on economic terms” due to the importance of those terms. *Id.*

52. Here, given all the facts and circumstances present in these chapter 11 cases, the Debtors have amply satisfied the necessary conditions under sections 364(c) and (d) of the Bankruptcy Code for authority to enter into the DIP Facility. The Debtors exercised proper business judgment in securing the DIP Facility on terms that are fair and reasonable, as well as the only and the best available to them under the circumstances. The Debtors have not identified any potential lenders willing to provide a post-petition financing on an unsecured or junior secured basis, the Prepetition Secured Parties are unwilling to consent to any priming financing from another third-party, and no potential alternative lender is willing to provide a non-consensual priming facility to the Debtors. *See* Schlappig Decl. ¶¶ 12-14. For all the reasons discussed further below, the Debtors respectfully submit that the Court should grant the Debtors’ request to enter into the DIP Facility pursuant to sections 364(c) and (d) of the Bankruptcy Code.

## **II. The Debtors Exercised Sound and Reasonable Business Judgment in Deciding to Enter into the DIP Facility**

53. Based on the facts and circumstances of these chapter 11 cases, the DIP Facility represents a proper exercise of the Debtors’ business judgment. As noted above, bankruptcy courts routinely defer to a debtor’s business judgment on most business decisions, including decisions about whether and how to borrow money. *See, e.g., In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (“Parties opposing the proposed exercise of a debtor’s business judgment have the burden of rebutting the presumption of validity”) (citing *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984)); *In re Garrett Motion Inc.*, No. 20-12212 (Bankr. S.D.N.Y. October 23, 2020) (approving postpetition financing as “a sound and prudent exercise of the Debtors’ business judgment”); *In re Metaldyne Corp.*, 409 B.R. 661, 667–68 (Bankr. S.D.N.Y. 2009) (noting

“decisions in [the Southern District of New York] emphasizing that [bankruptcy courts] should not substitute [their] business judgment for that of the Debtors”) (citations omitted), *aff’d* 421 B.R. 620 (S.D.N.Y. 2009); *In re Ames Dep’t Stores, Inc.*, 115 B.R. at 40 (“More exacting scrutiny would slow the administration of the debtor’s estate and increase its cost, interfere with the Bankruptcy Code’s provision for private control of administration of the estate, and threaten the court’s ability to control a case impartially.”); *see also In re ASARCO, L.L.C.*, 650 F.3d 593 (5th Cir. 2011) (noting that the business judgment standard in the context of section 363 of the Bankruptcy Code “is flexible and encourages discretion”).

54. Specifically, when evaluating whether a debtor’s decision to obtain postpetition financing was an exercise of sound business judgment, courts need only “examine whether a reasonable business person would make a similar decision under similar circumstances.” *In re Dura Auto. Sys., Inc.*, 2007 WL 7728109, at \*97 (Bankr. D. Del. Aug. 15, 2007) (quoting *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006)). When evaluating whether a debtor’s decision to enter into postpetition financing was an exercise of sound business judgment, bankruptcy courts consider the terms of the financing in light of the debtor’s circumstances and the market for financing more generally. *See In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors’ Comm. Mobil Oil Corp. v. First Nat’l Bank & Trust Co. (In re Ellingsen McLean Oil Co., Inc.)*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing a debtor may have to enter into “hard bargains” to acquire funds for its reorganization).

55. Prevailing market conditions are also highly relevant to a court’s evaluation of a debtor’s business judgment regarding the proposed DIP financing. *See Hr’g Tr.* at 734 35:24, *In re Lyondell Chem. Co.*, Case No. 09-10023 (Bankr. S.D.N.Y. March 5, 2009) (recognizing “the terms

that are now available for DIP Financing in the current economic environment aren't as desirable" as in the past). Businesses generally, and customer-facing businesses in particular, are facing various challenges related to inflation, extended pandemic impacts, and macroeconomic headwinds. *See* First Day Decl. ¶¶ 7-8, 53. Despite this economic environment, the Debtors have successfully negotiated financing that provides ample liquidity, attractive pricing, flexible budget covenants, and a committed path to reorganization. Moreover, the Restructuring Support Agreement and DIP Facility contemplate features which provide for a certain path to exiting these chapter 11 cases, such as the DIP-to-Exit Roll and the DIP Roll-Up Equitization. The proposed DIP Facility resulted from vigorous negotiation with the Ad Hoc Group, supported by experienced, professional advisors and, as set forth in the Schlappig Declaration, is the best and only option available to the Debtors. Schlappig Decl. ¶¶ 16, 29. Accordingly, the Debtors submit that the proposed DIP Facility should be approved as a sound exercise of their business judgment.

### **III. The Debtors Meet the Conditions Necessary Under Section 364(c) and (d) to Obtain Postpetition Financing on a Senior Secured and Superpriority Basis**

56. The Debtors propose to obtain financing under the DIP Facility by providing superpriority claims and liens pursuant to sections 364(c) and 364(d)(1) of the Bankruptcy Code. The Debtors propose to provide the DIP Secured Parties with liens on and security interests in all of the DIP Collateral, including (i) priming liens on collateral securing the Prepetition Obligations (other than the Prepetition ABL Collateral) and Unencumbered Property and (ii) junior liens on the Prepetition ABL Collateral, in each case, subject to the Carve-Out and the Canadian Priority Charges. The DIP Collateral includes not only all Prepetition Collateral, but any other assets of the Debtors, including assets that were not subject to any validly perfected liens or security interest as of the Petition Date, and, subject to entry of the Final Order to the extent granted therein, the proceeds of avoidance actions (in each case subject to the Carve-Out and the Canadian Priority

Charges and the rights of the Prepetition ABL Secured Parties with respect to the Prepetition ABL Collateral). In evaluating proposed postpetition financing under sections 364(c) and 364(d)(1) of the Bankruptcy Code, courts act in their “informed discretion.” *In re Ames Dep’t Stores*, 115 B.R. at 37. Courts perform a qualitative analysis and consider factors including whether (a) the debtor made a reasonable effort to find financing with better terms, (b) the financing is necessary to preserve assets of the estate, and (c) the terms of the credit agreement are fair, reasonable, and adequate. *In re Republic Airways Holdings Inc.*, 2016 WL 2616717, at \*11 (Bankr. S.D.N.Y. May 4, 2016). Here, the Debtors made reasonable efforts to identify alternative available financings, the funding is undoubtedly necessary to preserve the value of the Debtors’ estates, and the proposed DIP Facility is fair, reasonable and adequate under the circumstances to fund the Debtors’ restructuring and provide the means to implement a timely and efficient prepackaged restructuring.

57. Additionally, section 364(d)(1) of the Bankruptcy Code requires that lenders primed by superpriority DIP liens must either consent to such priming or that the Court must determine the primed prepetition lenders are adequately protected. Here, this requirement is satisfied because the Prepetition Secured Parties have either consented to the DIP Facility or have been deemed to consent to the DIP Facility in accordance with the Omnibus Intercreditor Agreement.

**A. The Debtors Are Unable to Obtain Financing on More Favorable Terms Than the DIP Facility**

58. Debtors need to demonstrate that they made a reasonable effort to find alternative financing before a bankruptcy court will order superpriority liens and claims. *In re Latam Airlines Grp. S.A.*, 2020 WL 5506407, at \*26 (Bankr. S.D.N.Y. Sept. 10, 2020); *In re Laffite’s Harbor Dev. I, LP*, 2018 WL 272781, at \*3 (Bankr. S.D. Tex. Jan. 2, 2018) (denying debtor’s request for

secured financing because debtor “did not make even a rudimentary effort to comply with section 364(d)(1) before seeking approval of a transaction which would prime [the proposed financier’s] lien”); *In re Harborwalk*, 2010 WL 346298, at \*2 (Bankr. S.D. Tex. Jan. 29, 2010) (“A debtor must show that it made a reasonable effort to obtain postpetition financing from other potential lenders on less onerous terms and that such financing was unavailable.”). But, the Bankruptcy Code “imposes no duty [on a debtor] to seek credit from every possible lender before concluding that such credit is unavailable.” *Latam Airlines*, at \*26 (citing *Bray v. Shenandoah Fed. Savs. & Loan Ass’n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986)); *see also In re Drillmar Oil & Gas, Inc.*, 2010 WL 5158258, at \*2 (Bankr. S.D. Tex. July 12, 2010) (approving debtors’ motion granting, among other things, senior liens and security interests where debtor required postpetition financing that could not be obtained on equal or more favorable terms than those presented by the secured financing liens within the time required by the debtors and avoid irreparable harm; *In re Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584–85 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense); *In re Ames Dep’t Stores, Inc.*, 115 B.R. at 40 (approving financing facility and holding that debtor made reasonable efforts to satisfy the standards of section 364(c) to obtain superior terms after discussing possible postpetition financing with four lenders); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996).

59. Moreover, when only a few lenders likely can or will extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub nom. Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989).

60. Here, the Debtors do not believe that comparable alternative sources of financing are reasonably available given the realities imposed by the Debtors' existing capital structure. Although the Debtors solicited financing proposals from potential new, third party capital providers, these efforts were unsuccessful. Consequently, the Debtors only option was to pursue good faith, arm's-length negotiations with the Debtors' existing stakeholders regarding the terms of the DIP Facility and broader restructuring. Schlappig Decl. ¶¶ 12-13. Through these negotiations, the Debtors obtained the economic and other terms of the DIP Facility, and believe it is the best financing proposal reasonably available under the circumstances. *Id.* at ¶ 29.

**B. The DIP Facility Is Necessary to Preserve the Value of the Debtors' Estates**

61. The Debtors have a fiduciary duty to protect and maximize their estates' assets. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004). The Debtors seek access to the DIP Facility consistent with that duty. Without access to the DIP Facility, the Debtors would be unable to fund critical payments that are essential to the Debtors' operational and restructuring viability. First Day Decl. ¶ 84.

**C. The Terms of the DIP Facility Are Fair, Reasonable, and Adequate under the Circumstances**

62. In considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *See In re Farmland Indus., Inc.*, 294 B.R. at 886; *see also In re Ellingsen MacLean Oil Co.*, 65 B.R. at 365. The appropriateness of a proposed financing facility should also be considered in light of current market conditions. *See In re Lyondell Chem. Co.*, No. 09-10023 (REG) (Bankr. S.D.N.Y. Feb. 27, 2009), Hr'g Tr. 740:4-6 ("[B]y reason of present market conditions, as disappointing as the [DIP] pricing terms are, I find the provisions [of the DIP] reasonable here and now.").

63. As noted above and as set forth in the Schlappig Declaration, the terms of the DIP Facility were actively negotiated by the Debtors, with the assistance of their advisors. Schlappig Decl. ¶¶ 19-20. Under the current facts and circumstances of these chapter 11 cases, the pricing, fees, and other economics provided for in the DIP Facility, taken as a whole, provide the only financing option presently available for the Debtors. *Id.* at ¶ 29. Moreover, the terms of the DIP Facility are fair, appropriate, reasonable, adequate under the circumstances, and in the best interests of the Debtors, their estates, and their creditors. *Id.* In particular, the Debtors negotiated for and obtained from the Ad Hoc Group, the ability to effectuate a cashless payoff of the amounts under the DIP Facility through the DIP-to-Exit Roll and the DIP Roll-Up Equitization as part of the Debtors' broader restructuring. The proposed DIP Facility is the cornerstone of the Debtors' proposed restructuring, without which the Debtors would not be able to implement the proposed value-maximizing prepackaged restructuring.

#### **IV. The Debtors Meet the Conditions Necessary Under Section 363 to Roll Up the Prepetition Obligations**

64. The proposed "roll-up" of \$62 million of Priority Lien Obligations with the DIP Roll-Up Loans is an exercise of the Debtors' sound business judgment. Section 363(b) of the Bankruptcy Code permits a debtor to use, sell, or lease property outside of the ordinary course of business, with court approval. Courts in the Fifth Circuit have recognized that the payment of prepetition obligations is appropriate where necessary to protect and preserve the value of the estate, including by preserving an operating business's going-concern value. *See, e.g., In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (authorizing payment of certain prepetition claims pursuant to "doctrine of necessity"); *In re Equalnet Commc'ns Corp.*, 258 B.R. 368, 369–70 (Bankr. S.D. Tex. 2000) (business transactions critical to the survival of the business may warrant payment of prepetition claims); *In re Johns-Manville Corp.*, 60 B.R. 612, 615–16

(Bankr. S.D.N.Y. 1986) (“[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor’s management decisions.”).

65. *First*, the DIP Rolled-Up Loans will be used to pay off certain of the Priority Lien Obligations, which are part of the senior-most tranche of Prepetition Obligations. Accordingly, the payoff of certain of the Priority Lien Obligations will not disturb the existing prepetition intra-lender priority scheme.

66. *Second*, the Debtors are incurring the DIP Rolled-Up Loans with the consent (which may be deemed consent) of all creditors that could potentially be impacted by such a roll-up. The Debtors have commenced these chapter 11 cases, including the incursion of the DIP Facility, with the support of a requisite majority of each tranche of their secured debt creditors, and the holders of over 99% of their common equity interests. Moreover, all Priority Lien Lenders are afforded the opportunity to participate in the DIP Rolled-Up Loans if they execute the Restructuring Support Agreement and commit to fund their respective prorated portion of the New Money DIP Term Loans. Further, a requisite majority of secured parties under each of the Prepetition Term Loans are consenting to the DIP Facility in accordance with the Restructuring Support Agreement. All other creditors, including general unsecured creditors, are expected to ride through these chapter 11 cases unimpaired. As such, the DIP Rolled-Up Loans do not harm the Debtors’ stakeholders, including the general unsecured creditors, because the only variable is timing, not certainty, of repayment.

67. *Third*, pursuant to the DIP Roll-Up Equitization, the DIP Rolled-Up Loans will be paid off at emergence through an equitization into New Common Equity of the Reorganized Debtors, not in cash. Accordingly, the DIP Rolled-Up Loans effectuate an indirect cashless payoff

of certain of the Priority Lien Obligations through the DIP Facility – which provides additional benefit to the Debtors’ estates, and further improves their long term liquidity.

68. *Fourth*, the Priority Lien Lenders (in their capacity as DIP Lenders) were not willing to provide the New Money DIP Loans without the inclusion of the DIP Rolled-Up Loans in the DIP Facility. The Debtors, on the one hand, and the DIP Lenders, on the other, engaged in arm’s-length negotiations and ultimately agreed to the inclusion of the DIP Rolled-Up Loans because the DIP Lenders were the only potential source of much-needed liquidity to the Debtors to fund their operations and these Chapter 11 Cases. Schlappig Decl. ¶¶ 14, 16. Without access to the New Money DIP Loans, the Debtors would be forced to commence a value destructive liquidation to the detriment of all the Debtors’ stakeholders. As a result of these negotiations, the incursion of the DIP Rolled-Up Loans, as a component of the DIP Facility, is a reasonable exercise of the Debtors’ business judgment.

69. Finally, refinancing (or “rolling-up”) a prepetition debt is a common feature in debtor-in-possession financing arrangements where, as here, necessary to induce prospective post-petition lenders to advance debtor-in-possession financing. The importance of roll-ups and refinancings in DIP facilities has been repeatedly recognized by this court. *See, e.g., In re Hornblower Holdings LLC, et. al.*, No. 24-90061(MI) (Bankr. S.D. Tex. Feb 22, 2024) [Docket No. 72] (interim order authorizing the refinancing of \$361 million of prepetition of indebtedness and \$224 million of new money loans); *In re Venator Materials PLC, et. al.*, No. 23-90301 (DRJ) (Bankr. S.D. Tex. May 16, 2023) [Docket No. 98] (interim order authorizing the roll-up of \$190 million of prepetition indebtedness and \$100 million of new money loans); *In re Oasis Petroleum Inc., et. Al.*, No. 20-34771 (MI) (Bankr. S.D. Tex. Sept. 30, 2023) [Docket No. 73] (interim order authorizing the roll-up of \$240 million of prepetition indebtedness and \$120 million of new money

loans); *In re Sanchez Energy Corp.*, No. 19-34508 (MI) (Bankr. S.D. Tex. Aug. 15, 2019) [Docket No. 144] (interim order authorizing the roll-up of \$175 million of prepetition indebtedness and \$175 million of new money loans); *In re Legacy Reserves Inc.*, No. 19-33395 (MI) (Bankr. S.D. Tex. July 23, 2019) [Docket No. 255] (interim order authorizing the roll-up of \$87.5 million of prepetition indebtedness and \$35 million of new money loans); *In re Gostar Exploration, Inc.*, No. 18-36057 (MI) (Bankr. S.D. Tex. Nov. 26, 2018) [Docket No. 213] (authorizing the roll-up of \$283 million of certain prepetition indebtedness and \$100 million of new money loans); *In re ATP Oil & Gas Corp.*, No. 12-36187 (MI) (Bankr. S.D. Tex. Aug. 21, 2012) [Docket No. 128] (authorizing the roll-up of \$368 million in prepetition indebtedness on an interim basis, in addition to \$250 million of new money loans (\$80 million on an interim basis)). The Debtors are proposing a roll-up of \$62 million of Priority Lien Obligations in exchange for \$62 million of DIP Rolled Up Loans, which is well within the precedents established by this Court.

70. Accordingly, the contemplated refinancing of a portion of the Priority Lien Loans is a sound exercise of the Debtors' business judgment and should be approved.

#### **V. The DIP Lenders Should Be Deemed Good Faith Lenders under Section 364(e)**

71. Section 364(e) of the Bankruptcy Code protects a good faith lender's right to collect on loans extended to a debtor, and its right to any lien securing those loans, even if the authority of the debtor to obtain such loans or to grant such liens is later reversed or modified on appeal.

Section 364(e) provides that:

The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal. 11 U.S.C. § 364(e).

72. Here, the Debtors believe the DIP Facility embodies the most favorable terms on which the Debtors could obtain postpetition financing. As described in the Schlappig Declaration, the negotiations of the terms of the DIP Facility with the DIP Lenders were conducted at arm's length. Schlappig Decl. at ¶¶ 19-20. Under the circumstances, the terms and conditions of the DIP Documents are reasonable, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code, in accordance with the DIP Orders and the DIP Documents and in accordance with the Approved Budget. Accordingly, the Court should find that each DIP Lender is a "good faith" lender within the meaning of section 364(e) of the Bankruptcy Code and that the DIP Lenders are entitled to all of the protections afforded by that section.

#### **VI. The Prepetition Secured Parties Are Adequately Protected**

73. Section 362(d)(1) of the Bankruptcy Code provides for adequate protection of interests in property due to, among other things, the imposition of the automatic stay.<sup>10</sup> *See In re Cont'l Airlines*, 91 F.3d 553, 556 (3d Cir. 1996) (en banc). While section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by-case basis. *In re Energy Partners Ltd.*, 409 B.R. 211, 236 (Bankr. S.D. Tex. 2009) ("Exactly what constitutes adequate protection must be decided on a case-by-case basis"); *In re Mosello*, 195 B.R. at 289 ("The determination of adequate protection is a fact-specific inquiry . . . left to the vagaries of each case."); *In re Martin*, 761 F.2d 472, 474 (8th Cir. 1985); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. Mar. 4, 1986) (the application of adequate protection "is left to the

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<sup>10</sup> Section 363(c)(2) of the Bankruptcy Code provides that, absent consent, a debtor may use cash collateral where "the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2)(A)–(B). Absent consent, section 363(e) of the Bankruptcy Code further conditions the use of collateral upon the debtor providing "adequate protection" of a secured creditor's interest in the property proposed to be used. 11 U.S.C. § 363(e); 3-363 Collier on Bankruptcy ¶ 363.05 (16th ed. 2010).

vagaries of each case, but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process”) (citation omitted).

74. After extensive arm’s length and good faith negotiations, the Prepetition Secured Parties have consented to, or in accordance with the Omnibus Intercreditor Agreement are deemed to have consented to, the use of their Prepetition Collateral, including Cash Collateral, subject to the provision by the Debtors of adequate protection as set forth in the Interim Order and the DIP Documents. The proposed adequate protection package is the product of arms’ length, and good faith negotiations between the debtors and the Prepetition Secured Parties and is an integral component of the comprehensive financing package made available pursuant to the issuance of the DIP Loans. Among other things, the Adequate Protection Liens and Adequate Protection 507(b) Claims are designed to protect the Prepetition Secured Parties’ interests in the Debtors’ property from any Diminution in Value caused by the Debtors’ use of the Prepetition Collateral, including Cash Collateral, during the pendency of these chapter 11 cases. As further adequate protection, the Prepetition Secured Parties under the ABL Credit Agreements and the Priority Lien Credit Agreement are also receiving payment of the reasonable and documented prepetition and postpetition fees and out-of-pocket expenses of their advisors, subject to the review procedures set forth in paragraph 19 of the Interim Order, and the Prepetition ABL Secured Parties are receiving payment of post-petition interest.

## **VII. The Use of Cash Collateral Is Warranted and Should Be Approved**

75. The Debtors’ use of property of their estates, including the Cash Collateral, is governed by section 363 of the Bankruptcy Code, which provides in relevant part that if the debtor is authorized to continue operating its business during its chapter 11 case, the debtor “may use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1).

76. Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor may not use cash collateral unless “(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.” 11 U.S.C. § 363(c)(2). Section 363(e) of the Bankruptcy Code provides for adequate protection of interests in property when a debtor uses Cash Collateral. Further, section 362(d)(1) of the Bankruptcy Code provides for adequate protection of interests in property due to the imposition of the automatic stay. *See In re Cont’l Airlines*, 91 F.3d 553, 556 (3d Cir. 1996) (en banc). As discussed above, section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, but courts decide what constitutes sufficient adequate protection on a case-by-case basis. *See, e.g., In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (explaining that the “determination of whether there is adequate protection is made on a case by case basis”).

77. This Court has approved similar adequate protection packages in recent chapter 11 cases, under similar circumstances. *See, e.g., In re Hornblower Holdings LLC, et. al.*, No. 24-90061(MI) (Bankr. S.D. Tex. Feb 22, 2024) [Docket No. 72] (granting superpriority administrative claims, adequate protection replacement liens, adequate protection payments and fees and expenses on an interim basis to the applicable prepetition secured lenders); *In re Gastar Exploration Inc.*, No. 18-36057 (MI) (Bankr. S.D. Tex. Nov. 26, 2018) [Docket No. 76] (same); *In re LINN Energy, LLC*, No. 16-60040 (DRJ) (Bankr. S.D. Tex. May 13, 2016) [Docket No. 89] (same); *In re Goodrich Petrol. Corp.*, No. 16-31975 (MI) (Bankr. S.D. Tex. Apr. 18, 2016) [Docket No. 45] (same); *In re Midstates Petrol. Co.*, No. 16-32237 (DRJ) (Bankr. S.D. Tex. May 2, 2016) [Docket No. 324] (same).

78. Here, to the extent that their consent is required, the DIP Secured Parties and the Prepetition Secured Parties have consented or are contractually deemed to have consented to the Debtors' use of the Cash Collateral, subject to the terms and limitations set forth in the Interim Order, the DIP Documents and the Omnibus Intercreditor Agreement. Further, as set forth above, the proposed adequate protection is appropriate, fair, and customary under the circumstances.

### **VIII. The Scope of the Professional Fee Carve-Out is Appropriate**

79. The Interim Order subjects the security interests and administrative expense claims of the DIP Secured Parties and the Prepetition Secured Parties to a professional fee Carve-Out, and with respect to the assets of MNC in Canada, the Canadian Priority Charges. Such carve-outs for professional fees have been found to be reasonable and necessary to ensure that a debtor's estate and any statutory committee appointed can reimburse their professionals in certain circumstances following an event of default under the terms of the debtor's postpetition financing. *See Ames Dep't Stores*, 115 B.R. at 40. In other words, the Carve-Out protects against administrative insolvency during the course of the chapter 11 cases by ensuring that assets remain for the payment of the U.S. Trustee's fees and estate professional fees notwithstanding the grant of DIP liens, superpriority claims, and adequate protection liens and claims. Moreover, other than in limited circumstances as noted above, neither the Interim Order nor the DIP Facility directly or indirectly deprives the Debtors' estates or other parties in interest of possible rights and powers by restricting the services for which professionals may be paid in these cases. *See id.* at 38 (observing that courts insist on carve-outs for professionals representing parties in interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced").

80. This Court has approved similar carve-out provisions in other cases, where the provisions have been agreed to by debtors and their postpetition lenders. *See, e.g., In re*

*Hornblower Holdings LLC, et. al.*, No. 24-90061(MI) (Bankr. S.D. Tex. Feb 22, 2024) [Docket No. 72]; *In re Legacy Reserves Inc.*, Case No. 19-33395 (MI) (Bankr. S.D. Tex. July 23, 2019) [Docket No. 255]; *In re Sanchez Energy Corp.*, Case No. 19-34508 (MI) (Bankr. S.D. Tex. Aug. 15, 2019) [Docket No. 144]; *In re Parker Drilling Co.*, Case No. 18-36958 (MI) (Bankr S.D. Tex. Dec. 13, 2018) [Docket No. 174]; *In re PetroQuest Energy*, Case No. 18-36322 (DRJ) (Bankr. S.D. Tex. Dec. 3, 2018) [Docket No. 328]; *In re Linn Energy, LLC*, Case No. 16-60040 (DRJ) (Bankr. S.D. Tex. May 13, 2016) [Docket No. 89].

**IX. The Debtors Should Be Authorized to Pay the Fees, Premiums and Expenses Required by the DIP Agent and the DIP Lenders Under the DIP Documents**

81. In consideration for their commitment to provide the DIP Facility, the Debtors have agreed, subject to Court approval, to an upfront premium equal to 3.00% of the principal amount of the New Money DIP Loans to the DIP Lenders, and, to the DIP Backstop Parties, a backstop premium of 12.00% of the share of DIP New Money Term Loans backstopped by each such DIP Backstop Party, each of which shall be payable-in-kind.

82. The Debtors have also agreed, subject to Court approval, to pay to the DIP Secured Parties any amendment fees, prepayment premiums, early termination fees, the Backstop Premium and Upfront Premium (each of which, for the avoidance of doubt, shall be fully earned as of the Closing Date and due and payable on the Closing Date), servicing fees, audit fees, liquidator fees, structuring fees, administrative agent's, collateral agent's or security trustee's fees, upfront fees and premiums, closing fees, commitment fees and premiums, exit fees and premiums, closing date fees and premiums, backstop fees and premiums, break fees and premiums, original issue discount, prepayment fees and premiums or agency fees, rights under the DIP Credit Agreement, indemnities and professional fees and expenses, including, without limitation, the reasonable fees and expenses of professionals retained by the DIP Secured Parties (including, without limitation, fees and

expenses of the professionals retained by, or on behalf of, any of the DIP Agent (including, without limitation, those of (i) McDermott Will & Emery LLP, as counsel; and (ii) each other local, foreign, regulatory or special counsel, consultant, or advisor selected by the DIP Agent) and the Ad Hoc Group (including, without limitation, those of the Ad Hoc Group Advisors), in each case, as provided for in the DIP Documents and the DIP Orders.

83. In light of the substantial amount of capital that the DIP Lenders have committed to provide to ensure an efficient and value-maximizing chapter 11 process, the Debtors, in consultation with their advisors, believe that the consideration being provided to the DIP Lenders, taken as a whole, in exchange for providing such commitment, is reasonable under the circumstances and necessary to obtain the DIP Facility. Accordingly, the Court should authorize the Debtors to pay the fees and expenses provided under the DIP Documents in connection with entering into those agreements.

**X. The Automatic Stay Should Be Modified on a Limited Basis**

84. The Interim Order contemplates modification of the automatic stay to (a) permit the Debtors and their affiliates, the DIP Secured Parties, and the Prepetition Secured Parties to implement and effectuate the terms and provisions of the Interim Order and the DIP Documents and (b) permit the DIP Secured Parties to exercise rights and remedies under certain circumstances. The Debtors believe that these provisions were required for the Debtors to obtain the DIP Facility and use Cash Collateral as provided in the Interim Order. Moreover, following the delivery of a Termination Notice, the DIP Secured Parties are required to file a Stay Relief Motion with not less than five (5) business days' notice seeking emergency relief from the automatic stay if it intends to exercise remedies, and until such time as the Stay Relief Motion has been adjudicated by the Court, the Debtors may use the proceeds of the DIP Facility (to the extent drawn prior to the

occurrence of Event of Default) or Cash Collateral to fund operations in accordance with the Approved Budget, the DIP Documents, and the DIP Orders.

85. Stay modifications of this kind are ordinary and common features of debtor-in-possession financing arrangements approved by this court. *See, e.g., In re Hornblower Holdings LLC, et. al.*, No. 24-90061(MI) (Bankr. S.D. Tex. Feb 22, 2024) [Docket No. 72] (modifying automatic stay as necessary to enforce the terms of the DIP order); *In re Vanguard Natural Resources, Inc.* (DRJ) (Bankr. S.D. Tex. Apr. 30, 2019) [Docket No. 241] (same); *In re Southcross Holdings LP*, No. 16-20111 (MI) (Bankr. S.D. Tex. Apr. 11, 2016) [Docket No. 200] (same); *In re Autoseis, Inc.*, No. 14-20130 (RSS) (Bankr. S.D. Tex. Mar. 27, 2014) [Docket No. 234] (same); *In re ATP Oil & Gas Corp.*, No. 12-36187 (MI) (Bankr. S.D. Tex. Aug. 17, 2012) [Docket No. 128] (same). In the Debtors' business judgment, stay modifications are reasonable and fair under the circumstances of these chapter 11 cases.

**XI. Failure to Obtain Immediate Interim Access to the DIP Facility and Cash Collateral Would Cause Immediate and Irreparable Harm**

86. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code or to use cash collateral pursuant to section 363 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the Court may conduct a preliminary, expedited hearing on the motion and authorize the obtaining of credit and use of cash collateral on an interim basis to the extent necessary to avoid immediate and irreparable harm to a debtor's estate. *See* Bankruptcy Rules 4001(b)(2) and 4001(c)(2). Furthermore, section 363(c)(3) of the Bankruptcy Code authorizes the Court to conduct a preliminary hearing and to authorize the use of cash collateral on an interim basis "if there is a reasonable likelihood that the [debtor] will prevail at the final hearing under [section 363(e) of the Bankruptcy Code]." 11 U.S.C. § 363(c)(3).

87. As set forth in the First Day Declaration, the Debtors would be unable to continue as a going concern if they do not obtain interim approval of the DIP Facility and access to Cash Collateral, which would cause immediate and irreparable harm to the Debtors and their stakeholders by dramatically diminishing the value of the Debtors' estates. First Day Decl. ¶¶ 83-84. Furthermore, the Debtors require access to additional liquidity provided under the DIP Facility to stabilize their operations, meet working capital and business operating needs, fund the administration of these chapter 11 cases, provide long-term stability and confidence for the Debtors' stakeholders, quickly emerge from these chapter 11 cases through their prepackaged plan of reorganization, and implement the relief requested in the Debtors' other "first day" motions. *Id.*

88. Accordingly, pursuant to section 363(c)(3) of the Bankruptcy Code and Bankruptcy Rule 4001(b), the Debtors request that the Court conduct an expedited hearing on this DIP Motion, and enter the Interim Order authorizing the Debtors to use Cash Collateral and obtain credit under the DIP Facility, all on an interim basis, pending approval on a final basis after the Final Hearing (if necessary).

#### **Emergency Consideration**

89. Pursuant to Local Rule 9013-1, the Debtors respectfully request emergency consideration of this motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid immediate and irreparable harm." As set forth in this motion, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of the Debtors' operations and that any delay in granting the relief requested could hinder the Debtors' operations and cause irreparable harm. Failure to obtain the requested relief herein during the first 21 days of these chapter 11 cases may severely disrupt the Debtors' operations at this critical juncture and

imperil the Debtors' restructuring efforts. Accordingly, the Debtors respectfully request that the Court grant the relief requested in this motion on an emergency basis.

**Waiver of Bankruptcy Rules 6004(a) and 6004(h)**

90. The Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies the requirements of Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this motion is necessary for the Debtors to operate their business without interruption and to preserve value for their estates through these chapter 11 cases.

**Notice**

91. The Debtors will provide notice of this motion to the following parties or their respective counsel: (a) the Office of the United States Trustee for the Southern District of Texas; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the administrative agents under the Prepetition Credit Documents; (d) counsel to the Ad Hoc Group; (e) counsel to the DIP Agent; (f) the United States Attorney's Office for the Southern District of Texas; (g) the Internal Revenue Service; and (h) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

92. A copy of this motion is available on (a) the Court's website, at <https://www.txs.uscourts.gov>, and (b) the website maintained by the Debtors' proposed claims and noticing agent, Stretto, Inc., at <https://cases.stretto.com/Mitel>.

WHEREFORE, the Debtors respectfully request that the Court enter the DIP Orders substantially in the form attached hereto, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: March 10, 2025

Respectfully submitted,

*/s/ John F. Higgins*

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*Proposed Counsel to the Debtors and Debtors in Possession*

**Certificate of Accuracy**

I certify that the facts and circumstances described in the above pleading giving rise to the emergency request for relief are true and correct to the best of my knowledge, information, and belief. This statement is made pursuant to Local Rule 9013-1(i).

*/s/ Janine Yetter*

\_\_\_\_\_  
Janine Yetter

**Certificate of Service**

I certify that, on March 10, 2025, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

*/s/ John F. Higgins*

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John F. Higgins